

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY

STATEMENT OF CLAIM: For and in behalf of L. G. Salvatierra who was formerly employed by The Pullman Company as an Attendant operating out of the Chicago District Commissary. Because The Pullman Company did, under date of July 11, 1941, discharge L. G. Salvatierra from its service in the Chicago District Commissary, which discharge was unjust, unreasonable, in abuse of the Carrier's discretion and based upon charges unproved.

And further, for L. G. Salvatierra to be returned to his former position as an Attendant to the Chicago District Commissary and to be paid for all time lost by reason of such unjust and unreasonable discharge.

OPINION OF BOARD: The immediate and culminating cause for the discharge of Salvatierra from the employment of the Pullman Company is found in his misappropriation of Commissary supplies or funds on a trip of the car Bryce Canyon from Chicago to New York, May 9th and 10th, 1941. These particular derelictions were sufficiently proved by the reports of Inspectors D. F. Dwyer and R. W. Dvorak, District Commissary W. C. Flye and by the written admission signed by the Attendant himself. This written admission covers only certain specified supplies which were missing, i. e. 1 Martins V. V. O., 1 Soda, 1 Schlitz Beer, 1 Budweiser Beer, and 1 Old Gold. In addition to this specific admission there is enough evidence in the record to justify the conclusion that more elusive items such as orangeades, etc. were not accounted for. It is claimed by the Representative of the Brotherhood that this written admission was obtained under duress, but the record does not sustain this claim, and charges nothing that would constitute duress within any known and accepted definition of the term. The circumstances were that the Pullman Representative in New York required an explanation of the shortages and stated that if he did not get such explanation he would take Salvatierra off of the car, which was said to have been about ready to leave New York. It is hardly conceivable that an honest man under such circumstances would have signed such an incriminating admission for so slight a cause, especially in view of the fact that the Commissary records would have undoubtedly conclusively shown the items unaccounted for. He made no admission as to the other items above mentioned, but as we have stated, the evidence satisfactorily establishes that he did confiscate supplies and manipulate checks.

The record further shows that this Attendant had been in the employ of the Pullman Company for about 10 years prior to this discipline, and his service record was introduced in evidence.

Attendant Salvatierra testified in his own behalf on the hearing in this matter and neither he nor any one for him questioned the correctness of any

of the items shown thereon. It appears that for the first year of his employment he had occasion to be reprimanded, cautioned and instructed, and at least twice to be disciplined. Following that time the record indicates satisfactory service for about seven years, after which he again became at least careless in his duties and unsatisfactory to patrons of the Company. Without going into details it is apparent that he was handled patiently for the first year and gave satisfactory service for seven years; that thereafter he relapsed and became a problem for the Management. In 1939 he was charged with failure to issue checks or receipts, and was thereafter at least twice for having a dirty car or buffet, all of these minor infractions culminating in the present charges which we think are amply proved.

The Representative of the employe at the original hearing endeavored to create the impression, and in fact stated, that the Pullman Company was being very harsh with this Attendant and sent their Inspectors out to try and get him. Our impression of the record is quite to the contrary. Except for the period of good behaviour above mentioned this particular employe appears to have been a "problem child" for the Pullman Company, and it is quite apparent that they have done everything possible to retain him in service. It would be destructive of discipline and an encouragement to laxity, carelessness, insubordination and theft to disturb the findings in this case and to reinstate this employe. His is not the case of one having a long and satisfactory service record but on the contrary of one who has a long and unsatisfactory service record. He is not being harshly treated for a minor first offense but is being justly treated for a major offense culminating a long period of warnings, reprimands and minor disciplines. We are of the opinion that on this record the discipline is justified and should not be disturbed by us.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline is justified.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of September, 1942.