

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: For and in behalf of T. J. Foreman who was formerly employed as a porter by the Pullman Company, operating out of the District of Los Angeles, California. Because The Pullman Company did, under date of July 2, 1942, discharge Mr. Foreman from the service in said district on charges unproved; which action of discharge was unjust, unreasonable and in abuse of the company's discretion. And further for Mr. T. J. Foreman to be returned to his former position as a porter in the Los Angeles, California District and to be reimbursed for all wages lost as a result of having been unjustly and unreasonably discharged.

OPINION OF BOARD: Porter Foreman was discharged because of his alleged acts and conduct while in service on car 1377 from February 23 to 26, 1942. Porter Foreman had a fair hearing upon the charges made against him, and it was after such hearing that this employe was discharged. Nothing would be gained in reciting in detail the testimony produced at the hearing. Sufficient to say is that there was testimony to sustain findings that on this trip the porter exhibited an abusive and defiant attitude toward the Pullman conductor, used profane language, procured beer for soldier passengers against instructions, and failed to give necessary attention to duties. Claimant relies to a large extent upon the testimony of an apparently disinterested witness, one Mr. Vore. The testimony of Mr. Vore is in direct conflict with the statements of Mr. Bostick and the army officers present at the time, who are apparently as disinterested in this dispute as is Mr. Vore. It is not the function of this Division to weigh the evidence in disputes of this nature. It has been repeatedly held by this Division that if there is any substantial evidence to support the charges, the findings based on this evidence will not be disturbed; if the Carrier has not acted arbitrarily, without just cause, or in bad faith, its action will not be set aside. Nor is it the function of this Division to substitute its judgment for that of the Carrier in the matter of discipline. Under the facts presented we cannot say that the Carrier acted arbitrarily, without just cause, or in bad faith.

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 record will not warrant a revision of the action taken.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of September, 1943.