

Award No. 2298

Docket No. PM-2205

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 W. M. Granderson who is now, and for a number of years past has been, employed by The Pullman Company, operating out of the district of Richmond, Virginia. Because The Pullman Company did, under date of June 30, 1942, discipline Porter Granderson by giving him an actual suspension of sixty (60) days; which disciplinary action was unjust, unreasonable and in abuse of the company's discretion and based upon charges unproved. And further, for the record of Porter Granderson to be cleared of the charges made against him and for Porter Granderson to be reimbursed for the pay lost as a result of having been unjustly disciplined.

OPINION OF BOARD: This employe was charged with and proceeded against jointly for two separate alleged offenses, occurring more than two months apart. A review of the record convinces us that this porter was not at fault in any respect with the failure of the ambulance to meet the train on time at Charleston. We think it clear from this record that no one would have accused Porter Granderson with any dereliction of duty in connection with the Charleston incident, had it not been for the delay of the ambulance meeting the train. We find no basis for the infliction of discipline based upon the Charleston charge. Any part of the discipline imposed which is based upon this incident must be held to be "without just cause" within the meaning of prior awards of this Division.

With regard to the charge growing out of the discharge of a passenger at Ronceverte, the evidence supports a finding of violation of rules. But it is impossible to separate this charge from the Charleston charge insofar as concerns the discipline imposed. The difficulty lies in charging and trying this man jointly for two separate offenses, and then imposing punishment jointly for the separate offenses. There is no way for this Division to unscramble the discipline imposed for the alleged violation which has no foundation in fact, from the discipline imposed for the separate alleged violation which finds support in the facts. As stated in First Division Award 8259, "Fairness requires that the entire proceedings be set aside." We think this result is especially applicable to the present record, because, while the facts relating to the Ronceverte incident show a technical violation of the rules, they also show many extenuating circumstances which make us question whether the Carrier intended to base any of the discipline imposed upon this incident.

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 claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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