

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: For and in behalf of O. S. Slaughter who is now, and for a number of years past has been, employed by The Pullman Company, operating out of the District of Denver, Colorado. Because The Pullman Company did, under date of August 17, 1942, take disciplinary action against Porter Slaughter by giving him an actual suspension of fifteen days on charges unproved. And further, because said disciplinary action was taken as a result of a hearing at which Porter Slaughter did not have a fair and impartial hearing as set forth in the provisions of the contract between The Pullman Company and its Porters, Attendants, Maids and Bus Boys. And further, for the record of Porter Slaughter to be cleared of the charges made against him and for him to be reimbursed for the fifteen days lost as a result of the disciplinary action taken against him, which action was unjust, unreasonable and in abuse of the Company's discretion.

OPINION OF BOARD: Under date of June 27, 1942, charges were preferred against the employe who is the claimant herein. A hearing was had on June 30. The charges were that, "On February 9, 1942, following completion of trip from New York City as porter on car 1735, you exhibited a discourteous attitude towards a Pullman Service Inspector when requested to perform certain duties in order to place your car in a tidy condition, and subsequently you arbitrarily made unauthorized alterations in certain entries on your time sheet after the original entries had been properly approved." The second paragraph of the letter setting forth the charges is as follows:

"A previous incident appearing on your service record, occurring on September 8, 1939 and involving your failure to maintain your car in a proper condition with the respect to cleanliness, as well as your display of a discourteous, argumentative and insubordinate attitude will also constitute a charge against you and will be presented for consideration at this hearing."

Objection was made at the hearing that preferring the second charge relating to the incident in 1939 was improper, for a hearing had been had on that charge and this employe suffered a penalty of thirty days' suspension. In reply to this objection, Mr. McCaffrey for the Carrier stated: "In answer to Mr. Webster's remark just made, I wish to state that the incident involving Porter Slaughter's improper conduct on September 8, 1939, may properly be considered at this hearing inasmuch as it constitutes one of the charges upon which the hearing is being conducted."

Evidence was taken out over the objection of the employes' representative to the effect that the porter had failed to maintain his car in proper condition on its run on September 8, 1939.

Mr. Highberger, the District Superintendent, suspended the employe for fifteen days. No separate finding was made as between the two charges and it does not appear what part of the sentence may have been assessed for the earlier incident and what part for the later one. For ought that appears this man may have been penalized a second time for the same offense as that on which he was punished in 1939.

This is not such a case as we have just considered in Docket PM-2243, Award 2498, where we held that an employe's record might be reviewed in order to determine the penalty which should be assessed against him. This, as appears from the record, is not a review. The old charge was preferred against him a second time. The result is that this man did not have that fair and impartial trial to which he was entitled and apparently has been punished twice for the same offense. A similar state of facts has been considered in at least two awards which have held that the action of the carrier must be set aside. Awards 562 and 2298.

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 must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.