

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS—PULLMAN SYSTEM
THE PULLMAN COMPANY

STATEMENT OF CLAIM: Claim of Conductor E. W. Lindsay, Memphis District, that he was dismissed from service as Pullman Conductor on November 30, 1942, on false charges and, therefore, he asks that he be reinstated to his former position as Pullman Conductor with pay for all time lost.

OPINION OF BOARD: The claimant was dismissed from service for alleged misconduct toward a female passenger on a Pullman car of which he was the conductor. We shall pass over the nature of the charge with observation that if the alleged misconduct had been properly established the carrier would have been subject to censure if it had not, in the public interest, discharged the claimant.

At the hearing the claimant was confronted with a letter purporting to be from the passenger to the company and detailing her version of the incident upon which the claim was based, from which the name and address of the writer had, however, been deleted. Claimant's timely demand that he be advised of the identity and whereabouts of the writer of the letter was refused. This, we think, rendered the hearing unfair. While the carrier does not possess the power of subpoena and was not obligated to produce its witnesses in person, it had no right to withhold pertinent facts peculiarly within its knowledge or to offer in evidence only a part of said letter. The record discloses that the carrier conducted an independent inquiry to corroborate the letter, and the claimant ought to have been afforded a like opportunity to dispute it. This he was in no position to do so long as he remained ignorant of the source of the letter. The carrier says that it was motivated by a desire to protect its patron from embarrassment and humiliation. Commendable as that objective may be, it cannot be permitted to stand in the way of a fair trial of one whose means of livelihood is at stake.

The ends of justice would not be served by unconditionally sustaining or denying this claim. On the authority of Award 862, the case will therefore be remanded, with instructions to the carrier to elect whether it will: (1) dismiss said charge; (2) withdraw said letter from the record and make a new determination of said charge, without reference to said letter; or (3) advise the claimant of the name and address of the author of said letter and allow him a reasonable opportunity to furnish rebuttal evidence with respect thereto, after which the carrier will make a new determination of the charge herein, all without prejudice to the claimant's right to apply to this Board for a review of the carrier's future action or non-action. If the claimant is ultimately acquitted of said charge he will, of course, be entitled to pay for time lost.

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 employes involved in this dispute are respectively carrier and employes 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 claimant did not have a fair hearing.

AWARD

Cause remanded for further proceedings not inconsistent with foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1944.