

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of E. McCoy who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of the district of Denver, Colorado. Because The Pullman Company did, under date of April 21, 1943, take disciplinary action against Porter Mc Coy by assessing his record with an actual suspension of five days on a charge unproved; which disciplinary action was unjust, unreasonable, arbitrary and in abuse of the company's discretion. And further, for the record of Porter Mc Coy to be cleared of the charge made against him and for him to be reimbursed for the five days' pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: The claimant was the porter-in-charge of a sleeping car operated between Billings, Montana and Denver, Colorado. He was charged, tried and found guilty of carrying a passenger by Cheyenne, her destination, whereby she was required to travel back fifty-six miles and was delayed nine hours. For this, the claimant was suspended one round trip, the equivalent of five days. The petitioner says that the charge was not proved and that the penalty imposed was an abuse of discretion. It asks that claimant's record be cleared and that he be reimbursed for time lost.

There is in evidence a written statement voluntarily furnished the carrier by the claimant in which he says:

"I cannot account for not discharging this passenger as I . . . simply overlooked her space and did not call her."

In its original submission the petitioner said:

" . . . there is no dispute as to the facts in this case, that is, Porter Mc Coy who was in charge of the car on trip in question, carried the passenger by her destination."

On this state of the record, the assertion in the claim that the claimant was suspended "on a charge unproved" was wholly unjustified and ought not to have been made. This Board is a busy agency and its jurisdiction ought not to be invoked with respect to issues that are admittedly without merit.

The contention that the suspension of the claimant for the modest period of five days was an abuse of discretion is predicated upon the theory that other employes for similar derelictions of duty, were only cautioned or warned. In Award 1310 this Board rejected the proposition that an abuse of discretion may be established by a mere comparison of the penalties imposed in similar cases. There is nothing about this case to suggest an abuse of discretion.