Award No. 2771

Docket No. PM-2715

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of B. Lucas who is now, and for a number of years past has been, employed by The Pullman Company as an attendant operating out of the Chicago District Commissary.

Because The Pullman Company did, under date of December 11, 1943, penalize Attendant Lucas by giving him an actual suspension of 14 days on charges unproved; which action was unjust, unreasonable and in abuse of the company's discretion. And further, for the record of Attendant Lucas to be cleared of the charge preferred against him and for him to be compensated for the 14 days' pay lost as a result of this unjust, unreasonable and arbitrary action.

OPINION OF BOARD: Attendant B. Lucas on November 19, 1943, was charged with having refused on January 28-29, 1943, to comply with the request of a passenger for service and having acted in an insolent and insubordinate manner toward the Pullman Conductor. He was given a hearing on November 26. Thereafter, on December 11 he was notified the evidence at the hearing fully substantiated the charges, and punishment in the form of fourteen (14) days actual suspension was assessed and inflicted.

The claim of the Petitioner is the charges were unproved and that action was unjust, unreasonable and in abuse of the Company's discretion.

At the outset it is frankly conceded that when measured by the well established rule we will not weigh the evidence if there was testimony to sustain the action of the Company this claim would have to be denied. The conclusion, of course, closes the door to anything other than consideration of whether the action was unjust, unreasonable or in abuse of the discretion vested in the Management in disciplinary cases.

Conceded also is the proposition that in the determination of the issue last referred to the question of whether the Carrier's action is to be set aside depends upon whether it was so clearly wrong as to be unjust and unreasonable and therefore an abuse of discretion.

No individual or group of individuals has been more consistent in the pronouncement and application of the principles just referred to than the personnel of this Division. For that reason we approach consideration of the matters involved in this cause with the firm conviction no one will have the intrepidness to doubt the sincerity of our conclusion as expressed herein whatever the outcome of this case may be.

The fact that we have been consistent in our application of such rules does not mean that there cannot be a factual situation where, notwithstanding our adherence to them and irrespective of the status of the evidence, a situation may arise which convinces us a party to a disciplinary proceeding may not have been awarded a fair and impartial hearing. Nor does it mean that we are required to place our hands upon some definite circumstance or evolve some tangible theory which conclusively establishes complete justification for our view that situation prevails. It suffices if within the innermost walls of our conscience the conclusion persists.

In the instant case we are not disposed to cast any reflection upon the testimony of any witness. We simply say that from an examination of the entire record we have an innate feeling that something, perhaps unconsciously, other than a proper regard for the rights of all the parties to the controversy, had undue weight in influencing the Company to arrive at its conclusion. The same feeling prevails with respect to influences responsible for the testimony given by the Conductor at the hearing.

Under such conditions we conceive it is our obligation to intervene and do what in our judgment is just and equitable as between the parties. So, we exercise that prerogative and hold that the attendant disciplined did not have a fair and impartial hearing. On that account it follows the punishment imposed by the Company was an abuse of its discretion and should be set aside.

In announcing this conclusion this Division adheres to the just and equitable proposition that where doubt exists it is better that a guilty employe should go free even though it means compensation for lost time and reinstatement than that all employes should be denied the safeguards of a fair and unprejudiced hearing.

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 because of what this Division has determined amounts to an abuse of discretion, the claim of the Petitioner is sustained and it is ordered that the attendant involved be cleared of the charges preferred against him and that he be compensated for the time lost as a result of the Company's action.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1945.