

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 C. W. Lee 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 San Francisco, California. Because The Pullman Company did, on or about November 24, 1943, take disciplinary action against Porter C. W. Lee by giving him an actual suspension of 9 days; which action was unjust, unreasonable, arbitrary and in abuse of the company's discretion and based upon charges unproved. And further, for the record of Porter Lee to be cleared of the charges preferred against him in this case and for him to be reimbursed for the 9 days' pay lost as a result of this unjust and unreasonable action on the part of the company.

OPINION OF BOARD: A Pullman Porter, one C. W. Lee, was suspended for a nine (9) day period on sustained charges of (1) insubordination, (2) giving out false reports, (3) failure to properly guard his car, and (4) absenting himself from his car without good and sufficient reason. He denies generally all statements made by Company witnesses pertaining to misconduct, but admits that his action with respect to events, which all must concede gave rise to the controversy involved in charges 1 and 2, was motivated by a desire to get even with a Steward against whom he felt he had a grievance.

Petitioner in its submission and argument stresses the conflicting character of the evidence as to charges 1 and 2, and raises the question of sufficiency of the proof as to charges 3 and 4. No useful purpose will be served by relating the evidence in detail or unduly prolonging this opinion. As to the first two charges, it suffices to say the record discloses substantial evidence to the effect Lee was not only insubordinate to the Pullman Conductor, who under a book of instructions issued by the Company and of which he had a copy, was his superior officer, but also gave out a false report regarding instructions alleged to have been given him by an official of the Company. The same cannot be said of the status of the last two charges. As to them we have carefully reviewed the evidence and while it was apparent the Porter was out of his car, we fail to find any testimony that he was away from it without good or sufficient reason. Perhaps he was. But if so, the evidence does not establish that fact and we cannot assume it.

With the record in the state we have just related and applying the general principles this day announced in Docket PM-2677, Award 2769, to the facts as we find them a conclusion that charges 1 and 2 must be upheld is incapable. Likewise unavoidable is the conclusion charges 3 and 4 were not established.

We come then to a proper disposition of the cause. Were charges 3 and 4 the only ones involved the claim, of course, would have to be sustained. But they are not. Charges 1 and 2 were established by the degree of proof required. Should the penalty assessed be divided or should it be allowed to stand as imposed? We turn to the order of suspension for help in the solution of the problem. Reference thereto reveals that suspension was ordered, not on each ground to be found in the charges, but on the premise that considering all the facts brought out during the hearing disciplinary action in the form of an actual suspension of nine (9) days—one round trip—should be assessed. While we have said it is not our function to interfere or substitute our judgment for that of the Carrier in the matter of the extent of punishment unless it acted arbitrarily and capriciously, this is one case where the circumstances necessarily require our consideration of that subject. Since the order of suspension does not impose a penalty for each infraction but was based on a consideration of all the facts, it is our function then in the instant situation to determine the extent of punishment. We have examined the record. The punishment imposed was not severe and might properly have been assessed on either of the charges established. Therefore, we conclude the suspension order should stand as made. The Petitioner, of course is entitled to an order clearing Porter Lee's record of guilt on charges 3 and 4. It is so ordered.

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 action taken by the carrier in disciplining the employe involved should not be disturbed but his record should be cleared of those charges indicated in the opinion to have been unsubstantiated by the evidence.

AWARD

Claim denied as to suspension and penalty imposed. Sustained to the extent of clearing the employe's record of findings of guilt on charges 3 and 4.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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