

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. C. Carter who is now, and for a number of years past has been, employed by The Pullman Company as an attendant operating out of the District Commissary of Chicago, Illinois. Because The Pullman Company did, under date of December 31, 1943, discipline Attendant Carter by assessing his record with a "reprimand" on charges unproved; which action was unjust, unreasonable and in abuse of the Management's discretion.

And further, because Attendant Carter did not have a fair and impartial hearing in that the Management introduced certain purported evidence into the hearing, the very nature of which was such that the employe or his representative was precluded from either being confronted with the witnesses giving such evidence or having the right to cross-examine them.

And further, for the record of Attendant Carter to be cleared of the charge in this case and for the disciplinary action taken against him to be eliminated from his service record.

OPINION OF BOARD: For rendering improper service to passengers and displaying a discourteous attitude, the Claimant's record was assessed with a reprimand. It is asserted on his behalf that the Claimant did not have a fair and impartial hearing because (1) the Management introduced in evidence against him certain written statements of passengers, thereby depriving him of the right to cross-examine said witnesses; and because (2) the action taken was unjust, unreasonable and an abuse of discretion, in that the Management attached undue weight to the statements of said witnesses and minimized the significance of the testimony of the Claimant.

We pointed out in Award 2637 that the Management possesses no power to compel the attendance of witnesses at disciplinary hearings; and in Award 2770, where the subject was exhaustively considered, it was held that the right of cross-examination extends only with respect to witnesses who are personally present at the hearing. Both of said awards recognize, however, that the person on trial must be afforded a reasonable and timely opportunity to prepare and submit his defense. This means that the names and addresses of the persons whose written statements are to be used against him shall not be arbitrarily withheld from him, and that he shall be afforded reasonable time, either before or after the hearing is commenced, if he asks it, to contact said persons and to make his own investigation as to the truthfulness of their statements. In this case there is no showing of a request for the names of the witnesses or for further time to prepare a defense; nor does it appear that the Claimant was taken by surprise by the nature of the evidence produced against him.

The Claimant's second proposition is directed at the weight of the evidence, which is a matter beyond the purview of this Board.

There is no such showing of prejudicial error in the proceedings or of an abuse of discretion in the assessment of the penalty as would warrant our intervention.

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 Employees involved in this dispute are respectively carrier and employees 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 record discloses no grounds for disturbing the action of the Company.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of February, 1945.