

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of G. F. Allen, who was formerly employed by The Pullman Company as a porter operating out of the Chicago Northern District.

Because The Pullman Company did, under date of October 14, 1944, discharge Mr. Allen from his position in said district, on charges unproved, which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion. And further, because Mr. Allen did not have a fair and impartial hearing.

And further, for G. F. Allen to be reinstated to his former position as a porter in the Chicago Northern District with his seniority unimpaired and for G. F. Allen to be reimbursed for all time lost as result of this unjust and unreasonable action in this case.

OPINION OF BOARD: Porter George F. Allen was dismissed from service for conducting himself in an improper manner toward certain women passengers occupying accommodations in his car on June 17, 1944. The claim is for reinstatement on the ground that the charges were unproved and for further reason that Allen did not have a fair and impartial hearing. Reimbursement for all time lost is also claimed.

The main complaint centers on the charges made by a young lady passenger that Allen came into the ladies dressing room without knocking or Allen denies that he made any such request, or that he said or did anything other than what was necessary in the performance of his regular duties as ringing the buzzer ostensibly to bring soap to the occupants and that he made improper advances by requesting an indecent showing of her person. The evidence of the two participants to the incident is in direct conflict. There were no other persons present. We must necessarily examine into all the circumstances and conditions leading up to and following the incident to determine whether the Carrier acted in an unjust, unreasonable and arbitrary manner in discharging Allen because of his conduct.

The evidence shows that the complaining passenger was accompanied by her mother enroute from Chicago, Illinois to Los Angeles, California, the former occupying lower berth 13 and the latter lower berth 9. It is evident that many of the passengers had become overly friendly with Allen on the trip. It appears also that on the day before the incident occurred that Allen had requested the complaining passenger to desist from smoking as he was required to do by instructions given him by the Pullman Conductor. There is evidence in the record that she became incensed at the request although she asserts that she did not. The record discloses that Allen participated with other women passengers in the car in the use of bantering

and endearing terms throughout the day and evening. There is evidence that without excuse, he opened the curtains of one berth as the lady occupant was disrobing but hastily withdrew with a facetious remark which originated during the bantering talk of the day. The following morning at about 6:30 the incident took place which we have hereto related and affords the chief basis of complaint. Shortly after Allen left the dressing room another passenger entered it and the complaining passenger immediately told her of the incident. At about 8:30 A.M., the complaining passenger and her mother reported it to the Pullman Conductor who immediately called the train Conductor. After interviewing the porter the complaining passenger and other passengers, the conductors decided to require Allen to leave the train at the next stop but upon the request of other passengers he was permitted to remain on duty in his car, the complaining passenger and her mother being assigned new quarters in another car. It is evident from the record that the complaining passenger and her mother did not meet with the general approval of the other passengers in the car and that generally speaking they were in sympathy with Allen. It was upon this evidence that the Carrier, after notice and hearing, dismissed Allen.

We think the evidence is sufficient to support the decision of the Carrier. The Organization complains that there is no corroboration of the complainant's story. We think there is. The conduct and demeanor of Allen on the day before afford a proper setting for the very thing that happened here and constitutes a material circumstance. Undue familiarity with passengers by a porter is not only very unseemly but is fraught with latent possibilities that readily develop into episodes such as we have here. The evidence of the lady to whom the complaining passenger immediately told her story is, of course, hearsay as to the misconduct related, but it is competent evidence to show a prompt and immediate complaint, a fact that is very important in determining the credibility of a complaining witness. The evidence that Allen opened the curtains without warning as another lady passenger was disrobing indicates an inclination or propensity to commit acts of this nature. We are obliged to say that the evidence, if believed, is amply sufficient to sustain the Carrier's decision.

It must be remembered that acts of this kind are difficult of proof because they usually occur when there are no witnesses about. It is for this reason that the circumstances surrounding the affair, the credibility of the witnesses determined from their actions and demeanor, and any evidence indicating a propensity to do the acts with which the accused is charged, become very important in the decision of matters of this kind. We cannot say, therefore, that the Carrier was unjust, unreasonable or arbitrary in its action. The Carrier is charged with a very high degree of care in protecting the travelling public from occurrences such as we have here. Unless violations of rules of conduct on the part of employees closely associated with the public are enforced and maintained, the seed bed is made for more serious offenses. We can find no reason for interfering with the managerial judgment of the Carrier in dismissing Allen from the service.

Complaint is made that Allen was not afforded a fair and impartial trial in that the Carrier refused to divulge the address of the complaining passenger. There is no indication that the rights of Allen were prejudiced thereby. He had heard her accusations on the train at the time the episode occurred and her statement did not depart from the charges she then made. We think, however, that an employee is entitled to the name and address of a complaining witness and if the withholding thereof results in prejudice to the employee charged, the hearing would be lacking in fairness and impartiality.

We note from an examination of the record that Allen's Representative refused to permit a cross-examination of Allen regarding the misconduct charged on the theory that the burden of proof was on the Carrier and that the accused could not be required to answer questions that might aid in properly deciding the case. In this, the Representative was in gross error.

At a hearing of this kind, the Carrier may properly examine the accused concerning every point bearing upon his innocence or guilt, whether or not he testifies in his own behalf. Truth and not technicality should be the controlling factor in the making of decisions of this kind.

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 there is no basis for an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of June, 1945.