

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(James M. Douglas, Referee)

PARTIES TO DISPUTE:

**BROTHERHOOD OF SLEEPING CAR PORTERS
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.**

STATEMENT OF CLAIM: * * * for and in behalf of William O. Williams who was formerly employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company as a porter operating out of the Chicago, Illinois district.

Because the Chicago, Milwaukee, St. Paul and Pacific Railroad Company did through its local representative, Mr. B. J. Schilling, under date of December 20, 1944, discharge Mr. William O. Williams from his position as a porter with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company on charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion. And further, because William O. Williams did not have a fair and impartial hearing in accordance with the rules of the agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Brotherhood of Sleeping Car Porters, the Organization duly authorized to represent the class of employees to which William O. Williams was a part. And further, for Mr. William O. Williams to be restored to his former position as a porter for the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and for him to be reimbursed for the pay he has lost as a result of his having been unjustly and unreasonably discharged.

OPINION OF BOARD: Williams was charged "with violent actions toward the sleeping car conductor." The evidence shows that Williams with threatening and vile language struck at the Conductor. The Conductor seized and held him until he became quiet. Williams denies he did this and asserts the Conductor was the aggressor. We do not weigh the evidence here. The fact Williams addressed the Conductor in vile language a short time before the altercation was corroborated by a porter assigned to another car. Upon reviewing the evidence relative to the charge we find the charge was proved by substantial and sufficient evidence. Therefore, the claim that the Carrier has acted unjustly and arbitrarily in discharging Williams must be denied.

It is also claimed that Williams did not have a fair hearing because evidence of previous misconduct was presented at the hearing. Any such evidence is not relevant to the question of his guilt or innocence of the present charge against him. However, its use in this case could not have harmed him because there was sufficient evidence of the charge itself both to prove the charge and to justify the punishment imposed. We recognize the rule, although it is not necessary to the decision in this case, that under proper circumstances a record of prior misconduct is relevant to the question of the extent of the punishment where a charge is proved. Award 2498.

The record shows no objection was made to the genuineness of the written statements offered to prove the charge. The fact that the persons who made the statements were not present to testify in person does not render the hearing unfair. This has been ruled numerous times by this Division. The claim Williams did not have a fair hearing must also be denied.

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 evidence discloses no grounds for disturbing the action of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1945.