

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 J. Jefferson who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of the New York Central district, New York City. Because The Pullman Company did, under date of May 31, 1944, take disciplinary action against Porter Jefferson by assessing his record with a warning on charges which were placed against Porter Jefferson that were unjustified. And because such action, in addition to being unjust was unreasonable and in abuse of the Company's discretion. And further, for the record of Porter Jefferson to be cleared of the charge made against him and the Warning that has been placed against his record to be expunged.

**OPINION OF BOARD:** After a disciplinary hearing, the Claimant's service record was assessed with a Warning on account of a passenger being carried beyond his destination. While the claim asserts and the Petitioner contends that the Carrier's action was unreasonable and amounted to an abuse of discretion, there was no showing that the charge was insufficient or that the hearing was not fairly conducted. The only issue before us, therefore, is whether the finding is supported by the evidence.

The Claimant was a Pullman Porter on Car 32 from New York to Toledo. About 12:30 a.m. a passenger, bound for Cleveland, boarded the car at Syracuse. The passenger was placed in bedroom 'F' by another Porter who was temporarily guarding the car while the Claimant was off duty. When the Claimant resumed duty at about 2:00 a.m. he learned that bedroom 'F' was occupied; that the passenger's ticket had not been lifted and that his destination was not indicated on the call card. Instead of making an appropriate and timely inquiry to ascertain the facts, the Claimant erroneously assumed that the passenger was bound for Toledo and did not learn otherwise until it was too late to discharge him at Cleveland.

Much of the Petitioner's presentation is devoted to a discussion of the relative duties and responsibilities of the Pullman Conductor, the Claimant and the other Porter. These matters are, in our judgment, wholly beside the issue. The Carrier may well have imposed concurrent obligations upon these employees to guard against such incidents as occurred here. In any event, the other parties are not on trial here and the Conductor could not have been since he is under another agreement and is represented by another Organization.

That there was a definite responsibility on the Claimant to look after the welfare of this passenger can hardly be denied. The Claimant apparently recognized that obligation when he erroneously assumed that the passenger was bound for Toledo and marked the call card accordingly. For his negligence the Claimant was answerable. We cannot say that the penalty imposed was excessive.

There are many inconsistencies and conflicts in the testimony but it is not our function to pass upon the credibility of the witnesses or to weigh the evidence.

**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 there is no showing that the Carrier did not accord the Claimant a fair hearing.

#### **AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: H. A. Johnson**  
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1945.