

Award Number 3112

Docket Number PM-2817

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Luther W. Youngdahl, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF SLEEPING CAR PORTERS**

**THE PULLMAN COMPANY**

**STATEMENT OF CLAIM:** \* \* \* for and in behalf of E. Boswell who is now, and for a number of years past has been, employed by The Pullman Company as an attendant operating out of the Chicago District Commissary. Because The Pullman Company did, under date of February 12, 1944, take disciplinary action against Attendant Boswell by giving him an actual suspension of 15 days on charges unproved; which disciplinary action was unjust, unreasonable and in abuse of the company's discretion. And further, for the record of Attendant Boswell to be cleared of the charge in the instant case and for him to be reimbursed for the pay lost as a result of this unjust and unreasonable action taken by the company.

**OPINION OF BOARD:** This case involves the discipline of Employee E. Boswell, who was suspended for fifteen (15) days for displaying "a discourteous and arrogant attitude in refusing to serve commissary supplies to a passenger who desired such service."

Boswell was assigned to service as an attendant on Pullman Club Car Essex Falls, New York to Chicago, December 7-8, 1943, on New York Central Train 59. Carrier contends that on December 8th, its Inspector L. H. Olson entered Boswell's car and ordered a sandwich and bottle of milk. Boswell informed him that there was no food service on that car. The statement of Olson is corroborated by a statement from Conductor Smith who stated that Boswell told him that he had informed Olson that there was no food service on Boswell's car. Boswell denies that he told Olson there was no food service on his car and also denies that he told Conductor Smith that he had so informed Olson.

The record, therefore, discloses positive statements by two employees of Carrier supporting its position on the one hand, while on the other hand, in support of Employee's claim, his own vigorous denial that the statements were made.

We cannot agree with Brotherhood that because the Conductor was not present when the conversation took place between Olson and Boswell, that the Conductor's statement is not corroborating evidence. The Conductor's statement is not hearsay. He had a direct conversation with Boswell immediately after the incident occurred, and his statement of what Boswell told him definitely corroborates Olson's version of what took place.

If we were to sustain the claim on the conflicting evidence before us, we would in effect be determining, as a trier of fact, that the statement of two employees as to what occurred should be given no credence, while the state-

ment of Claimant should be believed. We would thus be passing upon the credibility of witnesses and weighing the evidence, which we have consistently declined to do.

While we do not have the responsibility of determining the facts, we do have the duty of carefully studying the record in order to decide whether the disciplinary action was unjust, arbitrary, or unreasonable, and whether any injustice was done to employee. This we have done, and reach the conclusion that the record establishes a reasonable basis for the exercise of Carrier's discretion in meting out the discipline in this case.

**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 Employee involved in this dispute are respectively carrier and employee 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 establishes a reasonable basis for the exercise of Carrier's discretion in disciplining employee.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary.

Dated at Chicago, Illinois, this 1st day of February, 1946.