

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Claim of the Order of Railway Conductors, Pullman System, in behalf of Conductor C. E. McMurphy, Los Angeles District, because The Pullman Company did, under date of July 2, 1945, take disciplinary action against Conductor McMurphy by suspending him from his current operation in Line 235½ between Los Angeles and El Paso, Texas, for thirty days commencing with reporting time at 5:45 P. M., July 4 to 5:45 P. M. August 3, 1945, which was unjust, unreasonable and in abuse of the Company's discretion. We now ask that his record be cleared of the charge and that he be compensated for all time lost.

OPINION OF BOARD: This is a disciplinary case. The claimant, C. E. McMurphy, was regularly assigned to line 3463, Southern Pacific train Nos. 5 and 6, between Los Angeles and New Orleans. On July 2, 1945, the claimant was suspended for 30 days. The reasons stated by the Carrier for the suspension were that "at the I. C. Station on the night of April 27, 1945, when you conducted yourself in a most unbecoming manner that you created a disturbance and interfered with the other Conductors who were occupied in the performance of their duties."

This Board has consistently ruled that it is not our function to weigh the evidence and if we find there is substantial evidence to support the charge we will not interfere with the action of the Carrier in a discipline case unless they acted arbitrarily, capriciously or without regard for the fundamental rights of the employe.

At the request of the Petitioner a hearing was held on September 11, 1945, at Los Angeles. At this hearing the claimant was represented by J. A. Bryant, Local Chairman.

Briefly the evidence was as follows: About 10 P. M. of April 27, the claimant while off duty and in civilian clothes went to the Conductors' table in the Illinois Central Station at New Orleans and began shouting, "hurry, hurry, hurry", and according to a statement by Pullman Night Agent Fonte the odor of liquor was detected on his breath and that "he placed himself on the bench at the receiving table shouting at passengers to Hurry, Hurry, Hurry—just making a fool of himself. I told Mr. McMurphy to cut out the shouting as it looked very foolish and he told me that no one else was complaining and if I did not like it to write him up as he was off duty.

"I told him I would write him up and he threatened me, stating he would have a settlement with me when he returned to New Orleans.

"This man carried on his foolishness in front of Pullman Conductors Gardner and Barkley of Los Angeles, S.P.R.R. Conductor J. T. Kaigler and also Mr. Lyons."

This is substantial evidence of the charge. This statement was corroborated in the main, but not in regard to the details, especially as to the smell or liquor on claimant's breath, by the statements of the men named in Fonte's statement.

The minutes of the hearing show the Local Chairman Bryant did not defend claimant's action or deny the statement made by other witnesses. For instance, Bryant said, " * * * we are not here to defend the conduct of this Conductor." Again he said, "If his conduct was not up to par, you had a right to call him in and speak to him about it."

As this Referee reads this evidence, Bryant did not contend that claimant's conduct did not call for some kind of action if he had been on duty, but since he was off duty the Carrier had no right to discipline this employe.

What an employe does when off duty and not on the property of the Carrier would not justify discipline so long as his conduct does not interfere with his work. See Award 2991; also Award 274, Fourth Division.

However, an entirely different situation is involved when an employe is on the Carrier's property. If an employe's conduct, while off duty but while he is on the Carrier's property, is harmful and detrimental to the Carrier, there can be no doubt as to the Carrier's right to take disciplinary action against the employe. See Award No. 3064.

There is substantial evidence to sustain the charge. We hold that the Carrier did not act arbitrarily or capriciously in assessing punishment in this case, especially in view of the punishment we approved in Award Number 3064. We have often ruled that we cannot substitute our judgment for that of the Carrier.

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 action taken by the Carrier in disciplining the employe was justified.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1947.