

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: . . . for and in behalf of S. Snider, who is now and for a number of years past has been employed by The Pullman Company as a porter operating out of the Pennsylvania Terminal District of New York City, New York.

Because The Pullman Company did, under date of August 22, 1945, take disciplinary action against Porter Snider by assessing his record with a Warning, said disciplinary action having been taken as a result of an alleged charge that Porter Snider was responsible for a passenger being carried by his destination on June 23, 1945; which action was unjust, unreasonable, arbitrary and in abuse of the Company's discretion.

And further, for the record of Porter Snider to be cleared of the charge made against him in this case and that the disciplinary action of a Warning be expunged from his record.

OPINION OF BOARD: Porter Snider was charged with carrying a passenger by his destination. At the hearing the following rule was introduced from the book of instructions:

"At intermediate stations ascertain from train conductor if car will reach station platform for discharge of passengers. If not, notify train conductor and arrange for discharge of passengers from car along side platform."

The facts show that the passenger was destined for Okeechobee, Florida, with scheduled time of arrival 4:44 A.M. At a previous station a woman passenger with a baby was discharged. In that instance, the Porter testified: "I walked up the coaches because we had a rainstorm and you couldn't see anything, but I walked up to the coaches with the train conductor when the train stopped and I helped this lady off the train." Carrier argues he should have done the same at Okeechobee and if he had done so the passenger would have been properly discharged there.

The facts are not disputed that the Porter had timely awakened the passenger, and the latter was fully dressed and was conversing with the porter in the smoker for some time before the train was due at his destination. The train was late. The train conductor, who knew a passenger was to be discharged at Okeechobee, had told the porter the train had slow orders, and that Okeechobee would be the second stop after the woman with the baby had been discharged. During that time the train was running very slowly because of something wrong at a bridge. Okeechobee is a flag stop. When

the train stopped at what the porter thought was Okeechobee, he opened the car door to discharge the passenger. He and the passenger looked out through the open door. The passenger was a resident of Okeechobee and had lived there for 40 years. There were no lights to be seen. Nothing was visible except rain and fog. The porter had never before discharged a passenger at Okeechobee. Neither passenger, an old resident, nor porter could recognize the place where the train was stopping as a regular stop. The train conductor and the brakeman were some distance away. The Pullman Conductor was asleep. Said the porter: "He (the passenger) looked out and it was raining very hard and a heavy fog. There was no light there to tell you it was Okeechobee so I wouldn't put him off; and he lived there. That was his home; he should know—I mean I wouldn't put him off because he didn't know it was Okeechobee or not."

It appears conclusive to us that the porter was not guilty of any negligent or wilful disobedience, any incompetency or carelessness. Had he known the train was stopping at Okeechobee he still could have taken the passenger forward so there was no disobedience of the rule above set out. As soon as the train started he immediately sought out the train conductor for information.

The record shows an answer by the porter that he was not certain of the intervening stop immediately before reaching Okeechobee because he was not paying "straight attention". But that had nothing to do with his failure properly to discharge his passenger. He was at his post, ready to do so, when the destination was reached.

We find Award 2645 is not apposite because there the porter admitted his carelessness was the cause of his failure to discharge a passenger. Award 3036, involving a similar charge, was likewise based on negligence.

It follows the action of the Carrier in imposing punishment on the porter in this case was not sustained by the facts and is, therefore, arbitrary. The porter should be cleared of the charge, and the disciplinary action expunged from his record.

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 Carrier's imposition of discipline was arbitrary because not sustained by the fact shown in the record.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1947.