

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 J. B. Dawson who is now, and for some thirty-five (35) years past has been, employed by The Pullman Company as a porter operating out of the Chicago Western District.

Because The Pullman Company did, under date of July 21, 1945, take disciplinary action against Porter Dawson by giving him an actual suspension of approximately ninety (90) days on charges unproved; which action was unjust, unreasonable and in abuse of the Company's discretion.

And further, for the record of Porter Dawson to be cleared of the charges made against him in this case and for him to be reimbursed for the time lost as a result of having been actually suspended by his district superintendent in connection with this case.

OPINION OF BOARD: The Porter in this case was charged that while on duty he was under the influence of intoxicants, he had an altercation with a passenger, and he used profanity in the presence of passengers. After a hearing he was suspended for the period of time he had been held out of service, amounting to approximately 90 days. He was given a remanded hearing in order to present new evidence.

It would serve no useful purpose to summarize or review the evidence here. We have studied the record carefully and find the evidence fully sustains and justifies imposition of punishment so that the action of Carrier in doing so is not arbitrary, unreasonable or unjust.

A suspension of 90 days may be severe penalty in some cases, but we do not feel justified in the instant case in reducing it in view of the severity of the charge and the abundance of evidence overwhelmingly in support of it.

The original date set for the hearing was some 62 days after employe was removed from service pending investigation. However, there is no violation of Rule 52, which provides that if an employe is held out of service pending an investigation for a longer period than the discipline adjudged, he shall be compensated for the difference. As we have previously pointed out, the suspension was for the same period employe was held out of service.

Written statements of Pullman Conductor Kiefer and Porter Browne, porter in another car, were used by Carrier at the hearing. Requests were made that these witnesses be produced in person for cross-examination which Carrier declined. We find nothing in the statements or in the grounds of the

objections made to them which rendered their use by Carrier in any way unfair. Since both witnesses were residents of Chicago they had long been available to Petitioner for the preparation of his defense. Under the rules Carrier is not required to produce witnesses in person. This has been held by a number of awards. See discussion in Award 2770.

The claim must 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 Employees involved in this dispute are respectively carrier and employees 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 are no grounds for disturbing Carrier's action.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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