

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS—PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: (1) Claim of the Order of Railway Conductors, Pullman System, for and in behalf of Mr. J. J. McDonald, employed as a Pullman Conductor in the Pennsylvania Terminal District up to September 9, 1944, on which date he was discharged from service. We contend that Mr. McDonald should be restored to his former position as a Conductor in the Pennsylvania Terminal District with all rights unimpaired and be paid for all time lost by reason of said discharge.

(2) Under date of September 14, 1944, Mr. McDonald requested a hearing under the provisions of the Agreement effective December 1, 1936. We contend that he was not granted a fair and impartial hearing as provided in Rule 51 of the Agreement.

OPINION OF BOARD: On September 9, 1944, Conductor McDonald was dismissed from Carrier's service by the District Superintendent "because of your actions in connection with the removal of a Pullman passenger from Pennsylvania Railroad Train No. 103 at Baltimore, Maryland, on August 23, 1944." He was restored to service on a leniency basis April 17, 1945, with rights unimpaired except pay for time lost.

Under provision of Rule 46 of the then current Agreement, McDonald complained, in writing, that he had been "wrongfully treated" and claimed the right to be reinstated to his position. A hearing was accorded him by the Superintendent who had written him advising him of his discharge. At the hearing, a number of ex parte statements were read into the record. These statements were all purportedly signed by fellow train crew members, special police officers and, one statement unsigned, purported to be that of one Keating, who claimed to have been the passenger removed from the train at Baltimore. This last document was procured by the Superintendent who discharged McDonald and who presided over the hearing. Not one of the authors of the statements submitted did McDonald have an opportunity to interrogate.

While we recognize the rule that it is not imperative that an accused employe be faced by witnesses giving evidence designed to effect his discharge, at the same time to apply that rule with such abandon as to work a miscarriage of justice cannot be condoned.

The propriety of such a ruling becomes apparent when an examination of the documents, upon which this Superintendent acted as the investigator, trier and executioner of the facts, be had. We instance the glaring discrepancy in the time of the difficulty as fixed by Keating and the actual time it had to have been to conform to the physical facts. The body of the statement is

parenthetically corrected or explained. Again, the very unsatisfactory and, quite obviously evasive statement of the Train Conductor, upon whom the responsibility for the entire episode rested, is in no way persuasive, much less convincing.

Aside from the unsatisfactory manner in which this hearing was conducted, we are unable to justify the discipline upon the merits of the case. McDonald went with Ticket Collector Bruen to check occupancy of the bedroom. One of the occupants handed McDonald a ticket that Bruen declined to accept. Bruen announced what cash fare would have to be paid. McDonald repeated the requirement. He was then forcibly ejected from the bedroom by the other passenger. He and Bruen reported the incident to Train Conductor Mullin. Mullin sent a wire for officers to meet the train at Baltimore. McDonald accompanied the officers to the bedroom in question, while Mullin, though present, evaded the discharge of his duty in the premises with the result that McDonald was told he would have to appear in police court against the passenger, which he did. At that hearing, not only did Mullin not appear or offer any assistance in the disposal of the matter, but Carrier's Representative, although present, was apparently, only concerned with making a report on McDonald.

It is significant that McDonald, after the dismissal of the charges against Keating, still inquired of the police magistrate concerning the collection of the fare of the second passenger. If he was guilty of anything, it was of being naive. He had violated no rule.

Claimant was not accorded the fair and impartial trial contemplated by the rules. Having been restored to service with rights unimpaired, he is entitled to be paid for time actually lost by reason of discharge, less earnings in other employment, except self-employment.

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 Claimant was not accorded a fair and impartial hearing as guaranteed by the rules, and should be paid for time lost in accordance with the Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.