

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 C. Henderson, who was formerly employed by The Pullman Company as a porter operating out of the St. Paul, Minnesota, District.

Because The Pullman Company did, under date of January 28, 1947, discharge C. Henderson from his position as a porter in the St. Paul, Minnesota, District on charges unproved, which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for C. Henderson to be restored to his former position as a porter in the St. Paul, Minnesota, District with seniority rights unimpaired, and to be reimbursed with pay for all time lost as a result of having been unjustly discharged.

OPINION OF BOARD: Claimant, a Pullman porter, was discharged. Petitioner seeks his reinstatement with seniority rights unimpaired and with payment for all time lost.

Claimant was charged with conducting himself improperly toward a woman passenger. After notice and hearings at which testimony for both parties was heard, he was discharged. Petitioner maintains the charge was not proved because Claimant was entrapped or "framed."

Carrier received a complaint about the porter on a car to which Claimant was assigned. However, the identity of the porter was indefinite. So Carrier assigned two inspectors, a woman and a man, to a similar trip on the car on which Claimant was assigned as porter.

While the woman inspector was sitting alone before retiring, Claimant came to her seat, placed his finger on the back of her ear and admired her earrings. Claimant admitted admiring the earrings but denied touching her ear.

Then when the woman was sitting in her berth with her feet on the floor and buttoning the curtains, she says the porter commenced buttoning the curtains on his own volition so she drew herself inside the berth. She further testified Claimant reached through the curtains and touched her leg so she withdrew farther into the berth, and when Claimant was about finished buttoning the curtains he again reached into her berth and touched her leg. She made an outcry and the male inspector in the opposite berth got out and questioned the porter, telling him to go into the men's room. The conductor was called and the incident reported to him by both inspectors. The male

inspector testified he witnessed the porter reach into the berth both times. The porter admitted buttoning the curtains but denied reaching inside. It appears to be no part of the porter's regular duty to fasten curtains.

Petitioner claims entrapment, and relies chiefly on the testimony of the flagman who was riding in the Pullman. However, the flagman's testimony is denied by the woman inspector. The evidence in support of the charge is consistent and in two respects is confirmed by Claimant's own admissions. It establishes a reasonable and proper basis for dismissal.

From the testimony of the two inspectors, the conductor, and the admissions of Claimant himself that he had admired the earrings and had buttoned the curtains, we find sufficient evidence of undue familiarity with a woman passenger to justify the discipline imposed. Claimant had a fair hearing.

Accordingly, Carrier's discipline of dismissal was not unreasonable or arbitrary, and 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1948.