

Award No. 4229

Docket No. PM-4048

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of G. W. McLendon who is now and for some years past has been, employed by The Pullman Company as a porter operating out of the District of Jacksonville, Florida.

Because The Pullman Company did, under date of August 14, 1947, take disciplinary action against Porter McLendon by giving him an actual suspension of fifteen (15) days on charges unproved; which action was unjust, unreasonable, and in abuse of the Company's discretion.

And further, for the record of Porter McLendon to be cleared of the charge and for him to be reimbursed for the fifteen (15) days' pay lost as a result of this unjust decision.

OPINION OF BOARD: The Claimant, Porter G. W. McLendon, was given a suspension of fifteen days after a hearing on the charge that he had been "insubordinate and disrespectful to Day Agent W. B. Perry when he instructed you to unfasten your vestibule curtains and close the tail gates on your car preparatory to a switching move."

This claim is that the charge against the Claimant was not proved and asks that Claimant's record be cleared of the charge and that he be reimbursed for the loss of pay.

Perry's statement said that on the arrival of the train in Jacksonville he instructed Porter McLendon to cut his curtains and put up the tail gate but that Porter McLendon only looked at him in a scornful manner and paid no attention whatever; that the switchman then cut the curtain and closed the tail gate after all passengers were off. Perry's statement said further that he asked McLendon why this was not done before the train stopped and McLendon said that Perry had no business to say anything to him and that Perry made him sick. Perry's statement as to Claimant's action, attitude and words was substantiated by the statement of C. W. Holmes who said that he cut the curtains and closed the tail gate to avoid further delay in switching.

The Claimant denied making the statements attributed to him by Perry, said the curtains were cut all of the time; that he closed the tail gate while coming into the station but that some one came through the car and opened it again.

The Organization read into the record the written statements of two persons on behalf of the Claimant. The first of these was an undated statement by one Curlie L. Brinson, identified by the Representative of the Organization as "a non-clerical worker in the Pullman Linen Room." This

statement recited that Perry while on platform of Claimant's car said, "I don't see why the switchman has to cut the curtain and pull these gates" and that Claimant said to give him a chance and that he had cut the curtains and closed the gate before the train got in the station. Brinson only reported the conversation he heard, he did not say the curtains were then cut.

The written statement of Porter Westcott was also used by the Organization. In his statement Westcott said that his car was next to McLendon's, that before the train reached the station he and McLendon cut their curtains, put up their tail gates and started to bring out their luggage; that after they got in the station and started to put their people and baggage off a car attendant came through their car and opened their tail gate; that Perry got up on the platform of McLendon's car and when McLendon got up there from unloading passengers Perry asked why his gate was not fastened and McLendon said he had fastened it but some one opened it; that then the cars were separated and he did not hear what was said after that.

In the hearing it was definitely developed that the blind end of Westcott's car was next to McLendon's car, that therefore while they were discharging passengers they were separated by the length of Westcott's car.

The Claimant denied the accuracy of Westcott's statement in several particulars, simply asserting that Westcott was mistaken.

As against the confused and conflicting statements of the Claimant, Westcott and Brinson we have the clear and positive statements of Perry and Holmes as to the facts that the curtains were not cut, nor the tail gate closed and as to the insubordinate acts and disrespectful statements of the Claimant. There was ample evidence to support the finding of the Carrier that Claimant was guilty as charged.

The Organization also objected to the consideration or review of a past incident of insubordination by Claimant. We have said before that in fixing the penalty it is proper to consider the past record of an employee. Award 1599

The burden of the Organization's contention in its original submission here seems to be not that the evidence did not sustain the finding of the Carrier that Claimant was guilty as charged, but that "there is not sufficient evidence * * * to justify this severe penalty inflicted."

This Board has said many times that we will not disturb a penalty fixed by the Carrier unless the penalty is so clearly out of proportion to the offense as to show that the Carrier acted on bias or prejudice against the accused, and that its action was therefore unjust and arbitrary.

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 employe involved in this dispute are respectively carrier and employe 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

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of December, 1948.