

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of Noble King who was formerly employed by The Pullman Company as a porter operating out of the District of Denver, Colorado.

Because The Pullman Company did, under date of July 11, 1947, take disciplinary action against Mr. King by discharging him from the service of The Pullman Company in the Denver District, which discharge was based upon charges unproved; and which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for Mr. Noble King to be returned to his former position as a porter in the Denver District with seniority and vacation rights unimpaired and with pay for all time lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: This is a claim on behalf of a Pullman porter who was dismissed from service after a hearing for having annoyed and molested two young women passengers. The record is voluminous, consisting of nearly 300 pages, but the nature of the issues which we are called upon to determine do not require or justify extended discussion.

Much that is said on behalf of the Claimant relates to the sharp conflicts to be found in the evidence, but it is not the policy of this Board to undertake to resolve such disputes. We do not weigh the evidence, nor do we disturb the finding if it is fairly supported by proof of probative value, and there is ample evidence of that character in the record before us.

There is no basis for complaint because the Carrier did not produce its witnesses for cross-examination at the hearing. Neither party to a proceeding of this character possesses the power of subpoena and this Board has long recognized the use of written statements in lieu of oral testimony.

It is not necessary for us to pass upon the refusal of the Carrier to disclose the name of one witness whose written statement (with the name of the maker deleted) was introduced in evidence. In our consideration of the case we have ignored that part of the evidence and we find, nevertheless, that the Carrier's determination may be amply justified by other proof in the record which was clearly competent. In other words, this is not a case where the Carrier's finding necessarily rests upon incompetent evidence. We may observe, however, that Carriers should bear in mind that they assume the risk of having their findings set aside when, over proper and timely objections,

they make use of the statements of unidentified witnesses, and it afterwards develops that the findings necessarily rest upon such proof.

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 employes involved in this dispute are respectively carrier and employes 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 is no reason for disturbing the action of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of January, 1949.