

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 H. C. Bernard, who was formerly employed by The Pullman Company as a porter operating out of the District of New Orleans, Louisiana.

Because The Pullman Company did, under date of September 2, 1947, discharge H. C. Bernard from his position as a porter in the New Orleans District, which discharge was unfair, unjust, and illegal, and which action was in violation of the rules and regulations of the Agreement between The Pullman Company and its Porters, Attendants, Maids, and Bus Boys employed in the United States of America and Canada.

And further, for H. C. Bernard to be returned to his former position as a porter in the New Orleans District with seniority and vacation rights unimpaired, and with pay for all time lost as a result of this illegal action on the part of The Pullman Company in discharging him.

OPINION OF BOARD: This claim calls into review the action of the Carrier in dismissing the Claimant after a hearing on the following charge:

"You are temperamentally unfitted for service as a Pullman porter, as is evidenced by the fact that on September 8, 1946, you twice shot and seriously wounded a man on the City streets of New Orleans, Louisiana."

At the time of the hearing the Claimant was under bond awaiting a court proceedings. Between the time when the hearing was concluded and the Carrier's finding was announced he had been adjudged guilty by the criminal court and given a suspended sentence of one year.

The Organization strenuously urges that the charge upon which the Claimant was dismissed was too indefinite. We agree with that contention. Temperamental unfitness is, within itself, a most elusive thing; and when that condition of mind is predicated exclusively upon the alleged fact that on a given date the Claimant had twice shot and wounded a man, the charge is all the more ambiguous and lacking in certainty. The language of the charge means no more than if it had merely said, conversely, that the Claimant had at a given time and place shot and wounded a man and that he was, therefore, unfit for service as a Pullman porter. Such a charge would preclude consideration of the possibility that the shooting might have been wholly accidental, or the result of the proper exercise of self-defense. If the charge had been that the Claimant was morally unfit for service as a Pullman porter because he had unlawfully shot another man we would have an entirely

different issue; but that is not the situation presented by the charge that the Claimant was called upon to meet. We may add that the record shows that the Carrier proceeded upon the theory that it was unconcerned with the question as to whether the Claimant was at fault.

The Carrier was justified in taking the Claimant out of service until his responsibility for the altercation that resulted in the shooting was properly inquired into, and if the charge had been and the evidence had established that he was culpable or that he was a person of bad character or reputation it might have been warranted in discharging him.

We do not think, however, that the mere fact that the Claimant shot a man establishes, *ipso facto*, that he was unfit for service as a Pullman porter.

Inasmuch as we have concluded that the charge was insufficient to warrant a hearing, it is unnecessary to discuss the other irregularities urged on behalf of the Claimant.

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 charge was too indefinite to justify the Carrier's action in dismissing the Claimant.

AWARD

Claim sustained.

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.