

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of Augustus Irvin, who was formerly employed by The Pullman Company as a porter operating out of the Chicago Eastern District.

Because The Pullman Company did, under date of August 3, 1948, take disciplinary action against Augustus Irvin by discharging him from his position as a porter for The Pullman Company in the Chicago Eastern District on charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for Augustus Irvin to be returned to his former position as a porter for The Pullman Company, and for him to be compensated for all pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: This is a discipline case in which it was charged that Claimant, a Pullman porter, threatened to inflict bodily injury with a knife upon the Pullman conductor in charge and that he made obscene and profane remarks to the Pullman conductor when the latter gave him instructions concerning the condition of his car. An investigation was held which resulted in the dismissal of Claimant from the service. The Organization contends that the charge was not proved and the dismissal was therefore unjust, unreasonable, arbitrary and an abuse of the Carrier's discretion. The Organization contends that Claimant should be reinstated to his former position and be paid for all time lost.

The record shows the Claimant was assigned to Car Centessa leaving Los Angeles en route to Chicago. Shortly after leaving Los Angeles, the Pullman conductor deemed it necessary to advise the Claimant that the car doors should not be opened until the train was stopped, toilet doors should be locked upon arriving at stations and that vestibule doors should be closed after all passengers had boarded the train. Soon after the departure of the train from San Bernardino, the Pullman conductor again entered Claimant's car and called Claimant's attention to the fact that the car was too warm. The incidents resulting in charges being filed commenced at this point and we shall therefore briefly set forth the versions of the parties.

The Pullman conductor says that Claimant told him in a loud voice that his car was cool enough and that nothing was wrong with the air conditioning, and that I need not bother telling him about regulations or anything about his car. To avoid disturbing passengers that had already retired, the Pullman conductor asked Claimant to come to the rear end of the car where the Pullman conductor again asked him what seemed to be

the trouble. Claimant then began calling the conductor vulgar names and using profane language, then drew a knife and opened it, saying that he would "cut the hell" out of me.

The Claimant states that he did not use any vulgar or profane language to the Pullman conductor and that he not only did not draw a knife but that he did not even have a knife with him. His evidence is that the Pullman conductor in a loud voice in the presence of passengers ordered him to "get the train line and put it up." He says he finished making up the berth upon which he was working before doing it whereupon the Pullman conductor in a loud and rough voice said, "When I tell you to do something, I want you to do it". After they moved to the end of the car, Claimant says he complained to the Pullman conductor of his treatment of him in the presence of passengers and stated he had done all he could about the air conditioning of the car. He says the Pullman conductor interrupted him and said, "Don't give me any of your lip because I will throw you off the train". Claimant's reply was, "Conductor you can order me off the train, but are not going to throw me off".

The only other witness was Porter A. W. Branch who was deadheading back to Chicago and riding in Claimant's car when he heard the Pullman conductor and Claimant arguing outside the room in which he was sitting. He reports this portion of the incident in the following language: "About that time I came out into the aisle, I heard Conductor Duffy say to Porter Irvin, 'Don't give me any of your lip. If you do, I will throw you off this train'. Porter Irvin stated to the conductor, 'I haven't done anything to be thrown off the train for. I am trying to do everything you told me to do. I have carried out your instructions about the air conditioning, and threatening to throw me off the train isn't going to make do any more. Besides I don't think you have any right to talk to me like that because I haven't done anything to justify it'. Whereupon the conductor moved away and said, 'I will take care of you'".

The Pullman conductor testified that Claimant put his knife back in his pocket when Porter Branch appeared. Porter Branch makes no reference to a knife in his testimony. At the instance of the Pullman conductor, the train conductor detrained Claimant at Barstow, California. The investigation and dismissal followed.

There is evidence in this record, which if believed, would warrant disciplinary action by the Carrier. It is the rule that this Board will not resolve questions as to the credibility of witnesses or the weight to be given to their testimony. Carrier's investigation officer hears their evidence and has a full opportunity to observe their conduct and demeanor at the investigation. This is important in determining who is telling the truth and who is not. Where, as here, there is evidence, which if believed, is sufficient to sustain the charge, we cannot say that the action of the Carrier was arbitrary or unjust, or an abuse of discretion on the part of the Carrier. Awards 3827, 3734, 3235.

It is urged, however, that the punishment assessed is excessive. In this respect, if the Claimant drew a knife on the Pullman conductor and used the obscene, vulgar and profane language toward him which the Pullman conductor testifies to, a dismissal would be warranted. But in this case, other considerations bearing upon the punishment are involved. This Claimant entered the service of the Carrier on September 30, 1943. The incident with which we are here involved occurred on June 17, 1948. On December 13, 1945, this Claimant was suspended five days for refusing to accept an assignment and refusing to report to the District Office as instructed. On January 21, 1946, he was given a warning because of his arbitrary and insolent conduct toward a Service Inspector. On August 1, 1946, he was again warned for detraining a passenger short of destination and mis-handling of personal belongings of passengers.

We cannot of course consider the past record of any employe in resolving his guilt or innocence on a specific charge pending against him. If,

however, the evidence sustains the charge, his past record is proper to be considered in fixing the penalty to be imposed. The past record of this employe during the two and one-half years immediately prior to the incident with which we are here concerned, indicates a disposition to disregard rules and to resent the instructions of superiors. A willingness to cooperate with superiors and fellow employes is essential to the industry and where it is lacking to the extent that it imperils the efficiency of the Carrier, dismissal from service is warranted. The Carrier evidently felt that such action was necessary in the present case. We are in no position to say that the Carrier was arbitrary or unreasonable in so doing. See Awards 2498, 2440, 3235.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1949.