

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim is filed on behalf of Theodore S. Brown, former employe of the Dining Car Department of the Baltimore and Ohio Railroad Company, for reinstatement to service with no loss of seniority or other rights and pay for all time lost as a result of Carrier's disciplinary action.

This Organization contends that the charges against Mr. Brown were not proved and that the action resorted to by the Carrier was not based on the evidence adduced at the investigation.

OPINION OF BOARD: Charges were filed against Claimant, who was assigned as a waiter-pillow attendant in a reclining chair coach, for "sleeping on duty, failing to carry out instructions of Train Conductor, not providing proper service on train 9, October 26, 1948 and previous record." Upon hearing of the charges he was discharged from the service and seeks reinstatement with no loss of seniority and pay for all time lost.

Claimant's duties were to serve sandwiches and milk to the car passengers after the dining car was taken off and to furnish pillows after the train left Pittsburgh. The Train Conductor stated at the hearing, in brief, that after he boarded the train at Pittsburgh at 9:30 P. M., passengers were calling for pillows and the attendant was not in the car; that shortly before reaching New Castle at 10:40 P. M. he found Claimant, asleep in a Pullman car; also, that later, on the same trip, when the reclining chair car became full, he asked Claimant to remove his basket from a seat so that it could be assigned to a lady passenger and that Claimant refused, and made threats against him in the hearing of others. Claimant admitted being in the Pullman car from the time the train left Pittsburgh until found by the Conductor, and admitted refusal to remove his basket from a seat so that the passenger could sit there, and denied that he had been asleep while in the Pullman car, but said he had been reading there. Claimant, from anything appearing, had a fair and impartial hearing, upon notice and with representation, and a careful reading of the evidence convinces us that there was substantial support to the charges therein. In fact, Claimant's very admissions furnish such support. In considering the evidence, we have excluded all reference to threats, because of the insufficiency of proof of them.

After presenting evidence on the other charges, Claimant was interrogated briefly as to five other charges which had previously been made against him, and answered that he remembered each, but made no further comment on them. No objection to this line of questioning was made at the hearing and such evidence was admissible, particularly on the question of penalty.

Awards Nos. 4639, 1599 and 1022. In this case evidence of these charges was proper also to discredit Claimant's testimony that his only trouble had been with this Conductor.

We find no evidence of arbitrary action or caprice in the discharge of Claimant, and consequently could not, properly, if we would, substitute our judgment for that of the Management.

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 Employees involved in this dispute are respectively carrier and employees 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 evidence does not justify disturbing the disciplinary action of the Management.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.