

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * * for and in behalf of Frank Deggs, who was formerly employed by The Pullman Company as a porter operating out of the District of San Francisco, California.

Because of the action of The Pullman Company taken against Frank Deggs in a decision rendered under date of February 8, 1949, which reads in part as follows: "It is my decision, therefore, that I would not be justified in directing your reinstatement and return to duty, and, consequently, I sustain the action previously taken in dismissing you from Pullman service", which action is tantamount of a definite dismissal.

And further because The Pullman Company did not comply with the condition precedent set forth in Award 4207 wherein your Honorable Board directed that Deggs be reinstated to his position as a porter in the San Francisco District, etc., prior to preferring additional charges against him.

And further, because by proceeding with the hearing of Frank Deggs as of January 25, 1949, The Pullman Company subjected him to double jeopardy by having tried him twice on the same charge.

And further, because the charges preferred against Deggs in the above-mentioned hearing were not proved, and the action taken by the Company in its decision of February 8, 1949, was unjust, unfair, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for Deggs to be reinstated to his former position as a porter in the San Francisco District with seniority rights and vacation rights unimpaired and with compensation for any pay lost as a result of the action taken in connection with this case.

OPINION OF BOARD: This is a discipline case which was previously before this Board and upon which the Board issued Award 4207, directing that claimant be reinstated with pay for time lost and accorded a rehearing. It was also stated in the aforesaid Award that if, upon reconsideration, the Carrier believed that claimant should be reinstated, or if, upon rehearing, he be found innocent, reinstatement should be complete with seniority and vacation rights unimpaired.

Although unusual, our treatment of this discipline case in Award 4207 was not without precedent (see Award 1482). Clearly then, the argument of the Employees that claimant was deprived of his "constitutional rights" in being subjected to "double jeopardy", is without merit.

In remanding this case, we did so because of apparent elements of bias in the prior proceedings as evidenced by the wording of the previous charges, and the fact that the trier of the facts, in our opinion, did not explore certain obvious matters which, if established, would point more definitely either to the innocence or the guilt of claimant. There is no need to elaborate upon this point because we feel that our analysis of the evidence on the first hearing fully covers the situation.

The further evidence, as shown by the transcript of the second hearing, sets forth the basis upon which complainant arrived at her identification of the claimant as the person at her berth when she asserted her privacy was invaded. In addition, it reasonably and logically clears up the time discrepancies which we pointed out in our Opinion in Award 4207. Other evidence tends to weave more closely the web of circumstantial evidence involving the claimant in the incident. Claimant refused to answer questioning by the Carrier and offered no proof in his own behalf on the second hearing. There is no sound basis for his refusal to submit to Carrier's questioning. (See Award No. 2945). On the whole record, we cannot now say that there is no substantial or positive evidence of probative force upon which Carrier could have based a finding of guilt. Nor do we find partiality or bias in connection with the conduct of the rehearing. Accordingly, the claim must be denied.

The Employees on the rehearing as well as in its submission to this Board have raised the point that Carrier did not comply with our directive in Award 4207 to reinstate claimant and hence the charge should be dismissed. The record shows, however, that there was no loss of earnings involved and that on the hearing, Carrier representatives, in answer to the Employee representative's objection, stated, "If what you want is a statement from us that the man will today be returned to the rolls of the Company and is in a withheld status, that is what he is." One of our important reasons for directing reinstatement of claimant was to make him whole for any loss of earnings. That there was no record of his reinstatement immediately prior to the hearing, in view of the above-quoted statement, in our opinion is too minor a procedural technicality to be entitled to any weight. The records of the Carrier, however, should show claimant's reinstatement and withheld status as stated in the above quotation, in the event that it becomes material for any purpose in the future.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of January, 1950.