Award No. 5030
Docket No. PM-5043

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of L. S. Faulkner, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of Philadelphia, Pennsylvania.

Because The Pullman Company did, under date of September 14, 1949, take disciplinary action against Porter Faulkner by giving him an actual suspension of 5 days on charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Faulkner to be cleared of the charges in this case, and for him to be reimbursed for the 5 days' pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: Following a report relating to his conduct while regularly assigned to Car 352, Train 35, Philadelphia to Pittsburgh, May 17-18, 1949, and after a hearing, Porter L. S. Faulkner was suspended from service for a period of 5 days on charges that on the dates mentioned he had been discourteous to passengers who occupied space in his car and had failed to call a passenger who occupied Room "C" therein in accordance with the passenger's request and the information as shown on the destination call card.

The evidence on which the Company sustained the charges can and will be briefly summarized:

On June 2, 1949, David Goldman, of New York City, the complaining passenger, wrote the Company a letter stating the Porter had acted toward him in an "insolent manner" and that Mr. Zucker, another passenger, who was with him on the trip stated that he did not like the "insolence" of the Porter and arranged to have his space changed to another car. Mr. Goldman also stated he left word with the Porter to call him at 6:30 A.M. and that contrary to his instructions he called him at 5 A.M. The final paragraph of this communication goes on to say that shortly after Zucker and Goldman boarded the train they had some conversation with the Porter about the difference between Railroad and Central time in which the latter "in a very insolent manner" replied that he went only by Railroad time. It closes with a gratuituous comment the writer believed the Porter's attitude resulted from this conversation about time because thereafter his actions were "intolerant."

The letter to which we have just referred, and a short note from Mr. Zucker stating he confirmed what Goldman had written in his letter of June

2nd and that he had changed his space in Car No. 352 to another car because of the "insolence" of the Porter in question, were offered at the hearing for the purpose of sustaining the charges. To bolster this evidence the Company relied on and introduced a report from Day Agent Koslow. From this report it appears: That on arrival at Pittsburgh the morning of May 18 Goldman complained to Koslow that Porter Faulkner had been "insolent" and had called him one hour and thirty minutes before he should have and insisted he wanted to hear from the Pullman Company about his complaint; that Koslow had talked to the Porter and asked him to make a report of the incident but that the latter refused to do so, stating that if the passenger made a complaint he would answer it; and that he had also talked with the Pullman Conductor in charge of the Porters who said he knew nothing about any trouble on the trip in question and that no passenger had made any complaint to him about the Porter's conduct.

We are fully aware of and have no desire to detract from the force and effect of the established rule that in a discipline case it is not our function to weigh the evidence or substitute our judgment for that of the Company unless the record makes it appear its action is so clearly wrong as to constitute an abuse of discretion. However, in that situation or when there is no evidence to uphold the charge on which the discipline imposed depends, we are equally aware it is our duty to intervene and set its action aside.

What has been heretofore related makes it crystal clear that in the instant case, except for Goldman's statement the Porter awakened him at 5 A.M. instead of 6:30 A.M. as requested and to which we shall presently refer, there is no substantive evidence which would warrant the company in finding the claimant guilty of either of the charges it had made against him. Statements based on hearsay and rank conclusions, in and of themselves, are not sufficient to uphold a finding that one charged with an offense is guilty of its commission. When the statements of Goldman and Zucker are carefully examined that is all that is to be found there. How, we inquire, could the Company determine from what they had to say whether the Claimant had been "insolent" or "intolerant." Neither related facts on which it could base an independent conclusion. For all the record shows the viewpoint of each as to what constituted insolence and intolerance might have been so warped that a recital of the facts on which their rank conclusions on that point depend might well have required a finding acquitting the Porter of the charges. Be that as it may, he was entitled to a fair hearing under the rules of the current agreement and, so far as the charge of discourtesy to passengers is concerned, he failed to get it when the Company elected to rely on conclusions instead of facts in reaching a decision as to his guilt or innocence. This, we may add, is true notwithstanding the report of the Day Agent was produced in support of the charges. It was based on pure hearsay and did not even purport to be proof of what had occurred. Indeed the very most that can be said for its probative value is that it constituted proof of the fact Goldman had made a complaint.

The question whether the charge of having failed to call a passenger as requested is more difficult than the one just decided. It should perhaps be said there is much in the record to refute Goldman's unsupported statement that the Claimant called him an hour and a half earlier than instructed. Even so we are not disposed to weigh the evidence or hold there was none to support this second charge. Without laboring the question further, it suffices to say, our examination of the entire record convinces us the Company's error in accepting the conclusions, to which we have heretofore referred, as conclusive proof of the Claimant's guilt, without substantive facts to support them, permeates its entire decision and warrants us in holding that, under the conditions and circumstances here involved, its disciplinary action was so unjust, unreasonable and arbitrary as to constitute abuse of its discretion.

In reaching the conclusion just announced, we have not overlooked a contention to the effect that Faulkner's refusal to make a report of the incident when requested to do so by the Night Agent justifies the discipline imposed. This claim would be important if the Porter had been given a hearing on

any charge. Since he was not it merits little consideration and has been rejected.

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

The Company violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of September, 1950.