Award No. 5033
Docket No. PM-5050

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of J. L. Sharpe, who is now, and for some time past has been, 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 December 5, 1949, take disciplinary action against Porter Sharpe by giving him an actual suspension of twelve (12) days equivalent to the loss of $94.63 in pay, which action was unjust, unreasonable, arbitrary, unusually drastic, capricious and in abuse of the Company's discretion.

And further, for the record of Porter J. L. Sharpe to be cleared of the charge made against him in this case and for him to be paid the $94.63 loss that he suffered as a result of this unjust and unreasonable action.

OPINION OF BOARD: The facts of this case are not incontroversy and can be briefly stated.

On September 5, 1947, while making inspection of Pullman cars on Southern Pacific Train No. 2, Los Angeles to New Orleans, the Vice President of the railroad observed Porter Sharpe, assigned to car Lake Norris, smoking a cigarette in violation of Pullman Company instructions and promptly reported the violation. Thereafter Sharpe was charged with smoking in his car while on duty and notified he would be given a hearing on the charge. At this hearing, Sharpe, with commendable candor, admitted the charge was true and conceded that with full knowledge of the Company's rule prohibiting such conduct he was smoking a cigarette, while on duty, and at the time and on the date reported by the railroad official heretofore mentioned. Following such hearing Sharpe was notified that because of his violation of the rules as charged he was suspended from service for one round trip. This actually amounted to a twelve day suspension from the Company's service.

The foregoing factual statement makes it apparent the only question for decison here is whether, under the circumstances, the discipline assessed was so harsh and severe as to warrant us in holding it was arbitrarily and unjustly imposed. In fact the gist of the claimant's argument is that the violation of a rule prohibiting smoking on duty is a minor offense and in the instant case should either have been overlooked entirely or the charge dismissed with a reminder the rule was in force and effect and should not be violated in the future.

Thus it appears this case calls for application of the rule, so well established it requires no citation of the awards supporting it, that in a discipline

case our province is to examine the record for the purpose of determining whether the discipline meted out is so clearly wrong as to require a conclusion there has been an abuse of the discretion vested in the Company without regard to whether we would or would not have assessed a like penalty had the prerogative been ours in the first instance.

Upon examination of the entire record, conceding the discipline imposed was undoubtedly severe, particularly in view of claimant's long service of twenty-six years without evidence of former discipline, we are unable to say there has been any affirmative showing the discipline imposed resulted from arbitrary or capricious conduct on the part of the Company or any prejudice against the claimant. Indeed the contrary appears. Moreover, while claimant's suspension of twelve days may seem quite long it is not nearly as severe or drastic as it might on first blush appear to be. His was a round trip assignment covering twelve days. If he was to be suspended at all for his conceded violation of the rules a suspension for that length of time was almost a necessity, otherwise it would interfere with his regularly assigned tour of duty. Nor are we willing, as claimant would have us do, to hold that his conceded infraction of the no smoking rule did not permit his suspension from the Company's service. It follows claimant is not entitled to a sustaining award.

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 claim should be denied.

AWARD

Claim denied.

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.