Award No. 5645

Docket No. PM-5550

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: * * * * * for and in behalf of Noble Allen, who is now, and for some years past has been, employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company as a porter operating out of Chicago, Illinois.

Because the Chicago, Milwaukee, St. Paul & Pacific Railroad Company did, under date of December 27, 1950, take disciplinary action against Porter Allen by giving him an actual suspension of twenty (20) days on charges unproved; which action was unjust, unreasonable, and in abuse of the Company's discretion.

And further, for the record of Porter Allen to be cleared of the charge in the instant case, and for him to be reimbursed for the twenty (20) days pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: The Brotherhood, on behalf of Noble Allen, a porter, asks that his record be cleared of the charges made against him and that he be reimbursed for the pay he lost as a result of being suspended for twenty days.

On December 8, 1950, Carrier charged Claimant with the following:

> "1. Failure to collect parlor car revenue offered by passengers for accommodations on train;
>
> 2. Specifically for permitting party of six (6) passengers to occupy parlor car space without proper parlor car transportation;
>
> 3. Failure to properly report sale of parlor car space and to remit for same;
>
> 4. Failure to properly perform assigned duties on train in accordance with existing instructions."

Hearing on these charges was had on December 19, 1950 and on December 27, 1950, Claimant was notified that as the result of the hearing he was being suspended for a period of twenty days commencing December 29, 1950.

The facts incident to the charges arise out of the manner in which Claimant performed his duties as porter in charge of parlor car "Merrill" attached to and forming a part of Carrier's Train No. 21 while enroute from Chicago to Milwaukee on November 27, 1950. The train leaves Chicago at 12:15 P. M. and normally takes about 1 hour and 20 minutes to cover the trip.

The primary complaint arises out of the manner in which Claimant handled a group of six passengers who held coach tickets good from Chicago to Milwaukee. In this respect it should be mentioned that there is some evidence relating to a cash fare for parlor car seat No. 12 from Milwaukee to Iron Mountain. The auditor's report showed Claimant failed to remit the $1.38 collected for this fare and asked him to correct it on the next remittance. Claimant had cut a ticket or check for the seat. Clearly this failure to remit was an oversight on the part of Claimant, as he had cut a check. It was not of such a character that it would justify any disciplinary action on the part of Carrier. No bad motive was evidenced thereby and a remittance covering the oversight was all that was necessary and all that Carrier could reasonably ask and expect.

Admittedly a group of six passengers got aboard parlor car "Merrill" at Chicago holding coach tickets. They rode in either the parlor car or the diner while enroute from Chicago to Milwaukee, the latter being their point of destination. Claimant did not assign them to any specific accommodations in the parlor car nor did he cut any checks or tickets for them. While in the parlor car the group occupied space in the beavertail. Although they offered to pay the difference for first class tickets and, in addition, for parlor car accommodations they were permitted to ride all the way to Milwaukee on their coach tickets.

When these passengers came aboard Claimant had not received his diagram consequently, at that time, he did not know if he had any accommodations available. Some 40 minutes later, as was his custom, he met the conductor at the head of the dining car to pick up transportation. At that time he advised the conductor in regard to the desires of the six passengers who were then seated in the diner. Thereafter, when the men returned from the diner to the parlor car, Claimant again became aware that they did not have first class tickets so he again contacted the conductor and advised him of the situation. The conductor at that time advised the Claimant he had closed his books and there wasn't enough time left before reaching Milwaukee to raise the tickets. The conductor did not collect any increased fares for these six passengers for first class tickets nor did Claimant collect any charge for parlor car accommodations.

At the hearing Claimant testified his reason for not doing so was because he thought it was not his responsibility to collect such charge unless the passenger had a first class ticket, which it was not his but the conductor's duty to sell. Carrier offered nothing at the hearing to show that Claimant had ever been given specific instructions in that regard nor were any rules or regulations cited referring thereto. While it was one of the duties of the Claimant to collect cash fares for all accommodations sold in the parlor car to passengers wishing to ride therein who did not have such accommodations, however, in order to purchase such accommodations ordinarily a passenger must have a first class ticket. To sell such ticket is not the duty of the Claimant.

While we are of the opinion, under the circumstances here disclosed, that Claimant technically violated his duties it is readily understandable how it came about in view of the conductor's not raising these passengers' traveling accommodations from coach to first class. However, the evidence is not of such character that it will support a finding that Claimant's conduct was based on bad motives. It discloses that it happened because of what he understood was the limit of his authority in the absence of these passengers having first class traveling accommodations. In view thereof it is our opinion that the penalty involved is unreasonable and that a five-day suspension is the maximum reasonable penalty proper under the circumstances.

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 Carrier imposed an unreasonable penalty under the circumstances disclosed and, because thereof, the suspension is reduced to five days with direction to the Carrier to reimburse Claimant for any pay lost during the additional 15 days that he was suspended. In all other respects the claim is denied.

AWARD

Claim for reimbursement is sustained for any pay lost during the 15 days the suspension has been reduced but in all other respects the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of February, 1952.