

Award No. 5745
Docket No. PM-5851

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of B. Stewart, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Chicago District Commissary.

Because The Pullman Company did, under date of May 22, 1951, render a decision in which Porter Stewart was suspended from service for two round trips, which action was taken on charges unproved and was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Stewart to be cleared of the charge in this particular case, and for him to be reimbursed for the two round trips he lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: On the charge contained in the statement of claim B. Stewart, Attendant, was suspended from service for two round trips involving loss of pay for about six days.

At the time of the incidents involved Stewart was in charge of a club car on a Michigan Central train from Chicago, Illinois to Detroit, Michigan. The club car was a combination car containing six rooms for sleeping accommodations. The arrival time of the train was 7:35 A. M., although Stewart said it usually arrived ahead of schedule.

The evidence discloses that at about 6:55 A. M. W. E. Sammons, a porter serving one of the cars in the train went to the club car and requested a pot of coffee for a passenger in his car.

The porter's evidence is that Stewart refused to allow him to have the pot of coffee. He said that Stewart stated to him that if the passenger wanted coffee he should come to the car and get it. The porter reported the incident to his passenger and to the conductor.

The conductor's evidence is that he then went to Stewart and asked for a pot of coffee and his request was refused, whereupon he, the conductor, took a drinking glass, filled it with coffee and returned with it to the passenger. He said that Stewart stated to him that if the man wanted coffee he would have to come up to the club car to get it; that he wasn't going to spoil passengers by sending room service.

Stewart denied that he refused the coffee to the porter. Substantially his version is that he was engaged in other duties which at the moment

demanding his attention and so informed the porter whereupon the porter left without giving him sufficient time or opportunity to comply with the request. He denies that the conductor requested coffee from him and denies the remarks attributed to him. He said that the conductor came and procured a glass from him which he filled and took away.

Excerpts from the books of instructions to commissary employes which are in evidence make clear that service such as requested of Stewart was such as he was required to perform in his position of attendant.

This being true there appears to be but one thing for the Board to do with regard to the question of the Carrier's finding that there had been an infraction of duty, and that is, to say whether or not the finding is supported by substantial evidence of probative value. The only possible conclusion is that it is so sustained.

Under the circumstances the penalty imposed is not regarded as being excessive.

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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of May, 1952.