

Award No. 5847
Docket No. PM-5679

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of Enoch Davis No. 2, who was formerly employed by The Pullman Company as a porter operating out of the Chicago Northern District.

Because The Pullman Company did, under date of March 22, 1951, discharge Porter Enoch Davis from the service as a porter in the above-mentioned district on charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for Enoch Davis to be returned to his former position as a porter in the Chicago Northern District, and for him to be paid for all the time he has lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: Claimant Enoch Davis No. 2 was discharged by the Company on March 22, 1951. Immediately prior to discharge Davis was employed by the Company as a Porter operating on the Chicago Northern District.

In support of his discharge it is alleged that on January 13, 1951, he reported late to the C. & N. W. Station for a deadhead trip to Rhinelander, Wisconsin; that when he reported, he was under the influence of intoxicants; and that in the course of an argument with the Relief Day and Night Agent he used physical force in backing the Agent into a baggage truck and pinned his arms to his side.

It is stated that on the day in question Claimant accepted a call to report at 6:15 P. M. for his assignment. Later, about 4:00 P. M. on that date, he telephoned the district office and requested that he be relieved of his assignment on the ground that he was not feeling well. After some discussion he stated that he would try to take the assignment.

It is agreed that Claimant did not report promptly at 6:15 P. M. It appears that he reported at approximately 6:25 P. M., after arrangements had been made for another Porter to take the assignment. After some discussion between Claimant and Relief Day and Night Agent O'Connell, Claimant remained upon the station platform and the train pulled out with Porter Norris, a Porter who was on station duty, on the assignment of claimant.

From the evidence of record, it is quite clear that Claimant did report late with the result that the departure of the train was delayed some six minutes.

Agent O'Connell asserts that when Davis came close to him, he detected the odor of intoxicants on him; that he talked and acted more "drunk than sick". Testimony of other witnesses support the charge that Davis was in some degree under the influence of intoxicants, although such testimony is not as direct and conclusive as might be desired.

With respect to the third charge, that Davis backed O'Connell up against a baggage truck and by physical force pinned his arms to his side, there is positive and substantial evidence in the record. The testimony of witnesses that this action by Claimant actually took place is not successfully refuted in the record.

Upon a careful review of the evidence of record, we must conclude that Claimant was guilty of behavior which justified serious disciplinary action by the Company. The question remains to be asked whether or not the disciplinary action of discharge, which was taken, was arbitrary, unjust, or in violation of a reasonable discretion by the Company. We must conclude that it was not. There do not appear to be mitigating circumstances or other considerations which would justify the Division in changing the penalty which has been given. Therefore, the claim will be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Company did not violate the Agreement

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 18th day of July, 1952.