Award No. 5881

Docket No. PM-5921

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

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

Because The Pullman Company did, under date of August 13, 1951, render a decision in which the record of Porter Perry was assessed with a "Warning", which action was based on charges unproved and was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further for the record of Porter Perry to be cleared of the charge in the instant case, and for the disciplinary action (a warning) to be expunged from his record.

OPINION OF BOARD: Both parties to this dispute over the discipline imposed by the Carrier on Porter Perry agree that he answered "I did not choose to" when taken to task by the passengers who had asked him the whereabouts of the dining car. The Carrier concludes, from Perry's admission and from statements on other matters by Passenger Marquis, that Perry was discourteous to the passengers and deserves the disciplinary "warning" placed on Perry's record. The Organization comes to an opposite conclusion. In general in contends, in effect, that in such cases the Carrier proceeds on the assumption that, since the customers write, the customer's right. In other words, in cases of this sort the Organization believes that the Carrier does not provide its accused employes fair and impartial hearings but chooses to rely on one-sided statements of dubious veracity.

In the light of the circumstances of this and similar disciplinary cases we think that the principles that have generally guided the Board should be restated and perhaps elaborated. At various times in many cases we have said such things as (1) the burden of proof is on the Organization to show that the Carrier's action was unreasonable, arbitrary, unfair, prejudiced, or in bad faith; (2) where there is substantial evidence in support of the Carrier's discipline, the Board will not substitute its judgement for that of the Carrier or conclude that the latter abused its discretion; and (3) our Award in any particular case will be based on the application of these principles to the facts of such case.

We think that these principes are sound. Their general terms, however, require specific definition in particular cases such as the one before us now. In hearings on disciplinary cases Management, in the last analysis and up to the point of appeal to an outside tribunal, is judge and jury as well as prosecutor. A tribunal like this Board must of necessity therefore scrutinize Management's conduct to discovered whether its decisions have been reached by proper means. What content, for example, do the terms "arbitrary," "unfair," and "substantial evidence" have in terms of managerial behavior? Has the existence of an employe offense really been proven? Did the punishment fit the offense?

It is sometimes argued that a board such as this one is essentially an appelate tribunal and should therefore, in cases like the instant one, follow the usual appelate principles, to wit: the tribunal will not overturn the decision of the lower court or administrative body if there is substantial evidence of probative value in support of the original decision. We do not think this Board is an appelate body of this sort in this kind of case. The managerial decision on discipline is not comparable or analagous to a decision by a lower court or administrative body. All that Management does is conduct an investigation on a charge brought by itself against one of its employes. The employes representative has or takes only limited opportunity to conduct its own investigations and to challenge the allegation of Management or of those who have complained to Management.

In the instant case the evidence is limited to four items: (1) a letter from an aggrieved passenger; (2) a written statement by the accused porter, dictated by a Carrier official on the basis of oral statements by the accused and signed by the latter; (3) a written statement by an attendant on the car next to Perry's; and (4) a record adduced at an appeals hearing where the accused was directly questioned and examined by representatives of both parties. But there is no record of the complaining passengers having been sought out and examined by either the Carrier or the Organization.

Such examination would seem to be important in this case and in other, similar cases. True, at the time of hearing such complainants are often, perhaps usually, hundreds of miles away from the place of hearing as well as from the scene of the alleged offense. But it is not proper to expect that an ex parte statement by complainant should be recieved without question as necessarily having compelling force in the weighing of evidence. And in general, if a case is worth fighting to this Board by the parties, both should take the time and trouble to present decisive and substantial evidence.

In the instant case the problem is lightene dby Perry's admission that he uttered the previously quoted words to the passengers. The immediate issue before us, then, is not whether Marquis' letter has any value for us but whether these words, spoken as stated by Perry under examination by the Parties, constituted discourtesy and merited the discipline applied by the Carrier.

We think that the Organization has failed to establish that (1) Perry's words were not sufficiently discourteous to have merited a "warning" on Perry's record; and (2) the Carrier's action was unreasonable, unfair, or in bad faith. Accordingly we are not disposed to overturn such action.

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 the Carrier's discipline of Porter Perry should be permitted to stand.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Divison

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

Dated at Chicago, Illinois, this 23rd day of July, 1952.