

Award No. 5882

Docket No. PM-5922

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 A. Simmons, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Chicago Western District.

Because The Pullman Company, did, under date of August 22, 1951, take disciplinary action against Porter Simmons by assessing his record with a "Caution"; which action was taken on charges unproved and was unjust, unreasonable, arbitrary, and in abuse of the Company's descretion.

And further, because Porter Simmons did not have a fair and impartial hearing as is contemplated in the Agreement between The Pullman Company and the porters, attendents, maids and bus boys in the service of The Pullman Company in the United States of America and Canada.

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

OPINION OF BOARD: The principles guiding this Board in its consideration of this case are those enunciated by us in many previous awards, mose recently in Award No. 5881. Our study of the record and its conflicting statements leads us to conclude that the Organiation has not managed to instil reasonable doubt in our minds as to the essential accuracy of the statements submitted by Pullman Conductor McFarland and passenger Hayes in respect to the degree of care taken by Porter Simmons of the car to which he had been assigned on the trip in question. Nor has the Organization been able to establish that the discipline of "caution" on Simmons' record was unreasonable or unfair in the light of the fundamentally uncontroverted statements. We are inclined to believe that the Organization's efforts to prove that the Carrier's hearings were unjust and were inadequate to justify the conclusion reached by the Carrier fell considerably short of what was necessary for such proof. The Carrier offered to the Organization time for an investigation and an examination by the Organization of witnesses or persons making statements against Porter Simmons. Apparently the Organization decided against such action.

In the light of all these circumstances we are not disposed to overturn the Carrier's disciplinary decision.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Simmons should be permitted to stand.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

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