

Award No. 5974
Docket No. PM-5968

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY

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

Because The Pullman Company did, under date of September 14, 1951, take disciplinary action against Porter McDowell by giving him an actual suspension of one (1) round trip, which is equivalent to loss of pay for twelve (12) days; which action was unjust, unfair, arbitrary, based upon charges unproved, and in abuse of the Company's discretion.

And further, because Porter McDowell did not have a fair and impartial hearing.

And further, for the record of Porter McDowell to be cleared of the charge in the instant case, and for him to be compensated for the twelve (12) days' pay lost as a result of this unjust action.

OPINION OF BOARD: This is a discipline case. The record discloses that Sleeping Car Porter I. H. McDowell, employed by The Pullman Company for a period of thirty-four years or more, was charged with failure to detrain a lady passenger who occupied roomette accommodations in his car from Los Angeles, California, upon arrival of the train at the LaSalle Street Station in Chicago, Illinois, July 10, 1951, as a result of which this passenger was carried from the station to the CRI&P railroad yards.

Hearing on this charge was held in the office of the district superintendent August 15, 1951, after which the district superintendent rendered a decision on September 14, 1951. This decision held that Porter McDowell was responsible for the incident, and he was penalized by being given one (1) round trip off his particular assignment, causing a loss of pay to him of eleven and one-half days.

Appeal was taken through the regular channels up to and including the Vice President of The Pullman Company, and the last officer designated by management to handle matters of this kind. On October 30, 1951 the disciplinary action against the accused was sustained. The case is properly before this Board for determination.

Preliminary to our consideration of the factual situation presented by the record, we will briefly restate and reaffirm certain general and fundamental principles heretofore announced by this Division, each and all of which are

pertinent and applicable in our determination of the merits of the instant claim and all others disciplinary in character. Summarizing, they can be stated thus:

In its consideration of claims involving discipline, this Division of the National Railroad Adjustment Board—(1)—when there is positive evidence of probative force will not weigh such evidence or resolve conflicts thereon;—(2)—when there is real substantial evidence to sustain charges the findings thereon will not be disturbed—(3)—if the Carrier has not acted arbitrarily, without just cause, or in bad faith, its action will not be set aside; and—(4)—unless prejudice or bias is disclosed by the facts or circumstances of record, will not substitute its judgment for that of the Carrier. See Awards 2767, 3984, 3985, 3986 and 6032.

We relate the facts deemed necessary for a determination of this case.

The evidence for the most part is documentary. A copy of a statement submitted to Chief Special Agent H. E. Boyle of the Chicago, Rock Island & Pacific Railroad, by Special Agent J. A. Condit of that railroad is in evidence. We refer to a part of it to the effect that J. A. Condit received a telephone call from Patrolman W. C. Hurt, that he had found a lady passenger in the car "Golden Dawn" (the car to which the accused was assigned) arriving in Chicago on Train No. 4 running as second to No. 10, July 10, 1951, after the train had backed out of the coach yard at 51st Street. Patrolman Hurt advised that he had the lady in the Yardmaster's office and that she had requested transportation into Chicago. Condit contacted Chief Special Agent M. Morrissey of The Pullman Company at his home, and advised him of the case. Condit obtained a taxi, went to the 51st Street coach yard, and in the coach yard found Mrs. M—— W——. She advised Condit she was enroute from Los Angeles to Philadelphia, Pa.; that she had Pullman transportation for the rest of her trip. On arrival at Chicago in car "Golden Dawn" she occupied roomette No. 6, Car 40, Golden Dawn. She had reservation on the Pennsylvania Railroad Broadway Limited train, roomette 3, Car 282, July 10, 1951. Condit put her in a taxi and took her to the LaSalle Street Station, where at the Lost and Found Department she recovered her three pieces of baggage. Condit then procured Room 408 at the Atlantic Hotel for her, and by this time it was 2:45 A. M. C. S. T. When she got to the elevator to go up to her room, he assured her she would be contacted in the morning by a representative of The Pullman Company. Condit again called Chief Special Agent M. Morrissey of The Pullman Company and advised him where this passenger was located. Morrissey stated she would be taken care of in the morning. On July 11, 1951 Condit called Mrs. M. W. at her room in the Atlantic Hotel, and Assistant Superintendent Irvin Hornbostle of The Pullman Company was there with her and had obtained space for her on the Broadway Limited July 11, so she could continue her trip to Philadelphia.

Chief Special Agent M. F. Morrissey, in a written statement, related that on July 11 at 3:14 A. M. he received a call from Rock Island Special Agent Condit who related to him the details involving this lady passenger as appears in Condit's statement. Morrissey requested Condit to see that this passenger was provided taxi cab service and hotel accommodations, pending further investigation. At 5:00 A. M. Morrissey received another call from Condit that he had escorted this passenger by way of taxicab to the Atlantic Hotel where he was able to obtain accommodations for her. Morrissey telephoned the information he had obtained to the Central District; Mr. Schwartz, the Superintendent, stated he would continue the investigation.

A written statement by I. W. Hornbostle, Assistant District Superintendent, in substance is as follows: Pursuant to a telephone conversation with Mr. Schwartz, he contacted Mrs. M—— W—— at her room in the Hotel Atlantic. She appeared to be about sixty years of age, and while she was considerably disturbed over her experience, she was quite reasonable in her conversation. She did not hesitate to state she felt the entire incident was the fault of the Pullman Porter who was employed in Car 40, in which she occupied roomette 6. She stated she was upset and nervous over the incident, since she

had a definite understanding with the Porter when he removed her baggage from the roomette, she intended to detrain at Chicago. It was difficult for her to understand why he had not complied with her wishes and seen to it she was alerted and permitted to detrain when the train arrived at the station. She gave the Porter a dollar bill at the time he removed her baggage, and specifically made this request. She also stated she had some conversation with the Conductor concerning the possibility of making connections with a late departing Pennsylvania train, but that after this conversation with the Conductor she never saw him again. She took it for granted that no arrangements had been made and therefore directed she be alerted to get off at Chicago. "After hearing the lady's story, as a representative of the Carrier, I expressed apology for the treatment accorded her by the Porter. A settlement was made with her with reference to the expense she was put to by reason of her experience. I informed her I would be at the hotel at 2:30 P. M. to escort her to the Broadway Limited train." A statement was asked for with reference to her experience; she hesitated to give a statement and did so only on the promise that her name and address would not be divulged. This request was assented to. The Carrier follows this policy on occasions of this kind. "When I called at the Hotel at 2:30 P. M. I had her sign the attached release, and accompanied her from the Hotel to the Union Depot and saw to it she was located in roomette 7, car 282, on Pennsylvania train No. 28, the Broadway Limited."

We refer to the essential part of the statement made by Mrs. M—— W—— as follows: "I occupied roomette 6 in car No. 40, S. R. R. I. train No. 4, the Golden State Limited leaving Los Angeles, July 8th and arriving in Chicago July 10, 1951. On this particular trip the train arrived at Chicago, according to information I received, about 11:30 P. M. The Pullman Porter who serviced the car in which I held space contacted me during the evening, at which time I asked him if we were coming into Chicago. He advised me that we were just coming into Joliet, Illinois. He did, however, inquire if my bags were ready and I informed him that they were and he arranged to remove them from the roomette elsewhere in the car. During this conversation with the Porter I gave him a dollar bill gratuity and requested that he notify me when the train arrived at Chicago. After this conversation with the Porter I apparently dozed off to sleep, as the next thing I remember is that when I awakened my roomette, as well as the entire car, was in complete darkness and the train was moving. An employee passed through the car with a lantern and when he noticed me in my space, inquired where I was going. I informed him my destination was Chicago, to which he replied that the train had arrived in Chicago and unloaded and then was on its way out to the servicing yards. Quite naturally I became rather excited and disturbed as a result of my predicament, and on arrival at the servicing yard I was escorted to an office where it was suggested that the only thing I could do was to take a street car back down town. I informed the man in the office that this was my first trip to Chicago and I had no knowledge of where I was or where the transportation system would put me off down town. Consequently a taxicab was suggested, because of the character of the neighborhood, arrangements would be made to have a railroad representative accompany me in the cab to the down town area and a hotel. The entire incident was the fault of the Porter who serviced the car in which I occupied space. This statement is being made with the understanding that neither my name nor address will be divulged for any purpose in connection with this complaint."

There was read into the record the statement submitted by Mr. Schwartz, District Superintendent, on July 12, 1951, by the Porter, I. H. McDowell, in substance as follows: In reference to the report of a lady passenger that she was not detrained at the LaSalle Street Station in Chicago and was carried back to the yards on the car to which I was assigned, arriving in Chicago July 10, 1951, Golden State Limited in Line 229, Car 40, I had five passengers coming into Chicago on this trip, one passenger in roomette 6, one in roomette 3, two, man and wife in bedroom C, and a lady in bedroom D with two babies. After the train left Joliet, which is about forty minutes from Chicago, I went through and inquired of the passengers if their baggage was ready. I took out the baggage of all the passengers, including the baggage of the lady here

involved. Between Joliet and Chicago I was up and down the aisle on a number of occasions, and on one occasion after we had left Joliet, the lady in roomette 6 (the lady here involved) was standing in the aisle talking to the lady in roomette 3, all dressed and ready to get off. When we were arriving at the LaSalle Street Station I went through the car announcing "LaSalle Street Station, this way out", and was of the opinion that everybody had detrained. The baggage of the lady who occupied roomette 6 was handled through the Red Cap checking service therefore, there was no baggage left on the platform because the Red Cap took it after the passengers had detrained. I went through the car cleaning up the various accommodations, such as picking up the towels and turning out the lights. My recollection is that I went in every room and every compartment before I got off that train, and did not see that lady at all. My only conclusion is she must have been some place else.

At the hearing the accused testified he was thoroughly familiar with all Pullman regulations as they affected his position, and that he was aware of the fact that he should carefully check all Pullman space and should notify passengers shortly before arrival at destination that the train was approaching Chicago.

The Organization contends that the Company's action in disciplining Porter McDowell was unjust, unfair, arbitrary, and an abuse of the Company's discretion; that the accused did not have a fair and impartial hearing.

The facts in this case disclose the conduct on the part of Porter McDowell was not in keeping with the duties he was obligated to perform connected with his position. This passenger made it very plain that she wanted to detrain at the LaSalle Street Station in Chicago. She gave this Porter a gratuity as a reminder that she was desirous of service that would make sure her detrainment would be as indicated. There were only five passengers to be detrained at the LaSalle Street Station. Surely, attention to duty with the experience of this Porter would have made the detrainment of this passenger a simple matter under the circumstances. By his conduct, the Porter caused this passenger to become upset and nervous.

There was substantial competent evidence to sustain the charge. Under such circumstances this Division has repeatedly announced and adhered to the rule that it will not weigh the evidence or substitute its judgment for that of the Carrier in the determination of its force and effect. The rule is sound in principle. Reasons for its pronouncement are fully discussed in many of our decisions and need not be repeated here. See Awards 2768, 3411, 3984 and Awards cited therein. Also, Award 4840.

This Porter's record is pointed to as a factor to be taken into consideration. We believe the Carrier did just that. We are not unmindful of the fact that the record indicates good conduct and faithful service on the part of McDowell prior to this incident in dispute. The difficulty is, such evidence is negative in character, and except for purposes of testing credibility and the weight to be given his testimony, was of little probative value. It did not disprove the charge. Neither did it require The Pullman Company to disbelieve or reject evidence tending to establish it. Nor is it sufficient, as suggested, to warrant us holding the disciplining action assessed by the Carrier under the existing conditions and circumstances was so unjust and unreasonable as to constitute an abuse of discretion.

The Organization representative objected, as shown throughout the record, to the documentary evidence introduced, especially so as to the statement signed by the passenger, where at her request her name and address were not divulged, and as a consequence Porter McDowell was not afforded a fair and impartial hearing. There is no indication that the rights of McDowell were prejudiced thereby. He talked to the lady, asking whether her bags were ready. He received a gratuity from her. She informed him she wanted to detrain at the LaSalle Street Station. He must have been well aware of this fact.

We think, however, that an employee is entitled to the name and address of a complaining witness, and if withholding thereof results in prejudice to the employee charged, he has not had a fair and impartial trial. That is not the case here. See Award 2945 (c.f. Awards 1062, 1067, 1148 cited therein).

We note from an examination of the record that McDowell's representative took the position that due to the nature of the evidence introduced, to which objection was made, the Carrier was refused to what would constitute an examination of the accused, to bring out the facts, on the theory the burden of proof was on the Carrier, and the accused could not be required to answer questions that might aid in properly deciding the case. At a hearing of this kind the Carrier may properly examine the accused concerning every point upon his innocence or guilt, whether or not he testifies in his own behalf. Truth and not technicality should be the controlling factor in making decisions of this kind. See Awards 2945 and 2946.

As has been previously stated, the accused's representative contends that this action is supported by a statement of the complaining witness, whether her name or address is not divulged, and in addition, other evidence of this nature, i.e., statements of other witnesses heretofore noted are likewise incompetent evidence. This objection was apparently based on the right of the accused to be confronted with the witnesses who testify against him, and have the right to cross-examine them if he so desires.

It can be stated the contract does not specify the type of evidence that can be submitted at a hearing, and our decisions recognizing the competency of written statements are numerous, and requires no citations. See Awards 2772, 2541.

We conclude the disciplinary action taken by the Carrier in this case should be sustained.

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 Company did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1952.