

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: **** for and in behalf of O. W. Seymour, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of District of San Francisco, California.

Because The Pullman Company did, under date of January 11, 1952, take disciplinary action against Porter Seymour by giving him an actual suspension of twelve (12) days; which action was based upon charges unproved and was unjust, unreasonable, and in abuse of the Company's discretion.

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

OPINION OF BOARD: The Organization is requesting that the employe, O. W. Seymour, be cleared of the discipline charge against him and that he be reimbursed for twelve (12) days' lost pay, contending the Company by its suspension of the employe for twelve days, acted in an arbitrary, unjust and unreasonable manner, and was an abuse of the discretionary power of the Company.

Claimant, O. W. Seymour, is employed by the Company as a Pullman Porter, and was Assigned to Car #101, operating San Francisco to Los Angeles. On August 31, 1951, on arrival of his train at Burlingame, he opened the vestibule for the purpose of receiving passengers.

Without reciting the facts as to just what took place, there is no disagreement between the parties as to the ensuing altercation between the Claimant and the husband of a passenger boarding the train, as a coach passenger. The Porter made a prompt report immediately to his Pullman Conductor as to just what had occurred, which report agrees in substance with the record developed by the investigation held by the Company. The record shows conclusively the party with whom the altercation occurred, had taken full responsibility for provoking the argument between himself and the Claimant, and requested the Company to take no disciplinary action against the Claimant, except the Company should reaffirm to him, his lack of courtesy at the outset of the altercation by failing to explain it was improper to board the Pullman. See letter of Frank A. Neal to G. E. Arentz, District Claim Agent.

The Company charged the employe with assault on Mr. Neal, and a fair and impartial hearing was granted the employe on January 3, 1952, and as a result of said hearing and investigation, the Company on January 11, 1952,

by its letter to the employe, suspended him from duty for a period of twelve (12) days, having determined the evidence submitted substantiated the charge as alleged against the employe.

It is regrettable the incident occurred, and the record is indicative that the whole affair was brought about by Mr. Neal, husband of the boarding passenger, who in a fit of rage or temper, called the employe vile names without provocation, but at the same time the employe certainly did not use his better judgment when he struck Mr. Neal, which brought about the charge of assault being made against him. The record does not indicate the employe at any time was in danger of suffering bodily injury to himself, and we are of the opinion that the suspension for twelve days was not due to an arbitrary or capricious act by the Company, nor was it an abuse of its discretion. We are well aware the provoking party has requested the Company to take no disciplinary action in this case, but as this Board has held in many discipline cases, that unless the action by the Carrier is unreasonable, arbitrary and an abuse of its discretion, we cannot substitute our judgment for that of the Carrier, Award 2632. While there are mitigating circumstances in this case in favor of the employe, we must accept the judgment and finding of the Carrier, and hold that the suspension of twelve (12) days from service was reasonable and fair, as developed by a review of the record, and is not an abuse of discretion.

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 claim as established does not merit a sustaining Award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.