

Award No. 6565

Docket No. PM-6421

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

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

Because The Pullman Company did, under date of May 20, 1952, take disciplinary action against Porter McClain by assessing his record with a "Warning"; which action was based upon charge unproved, and was unjust, unreasonable, arbitrary and in abuse of the Company's discretion.

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

OPINION OF BOARD: All of the evidence upon which the assessment of this warning is based consisted of letters and signed statements: two letter reports dated January 30 and February 1, 1952, from Conductors on the train who had heard complaints and had interviewed passengers; two written signed statements, both dated February 14, 1952, secured from two soldier passengers giving their addresses at Fort Custer, Michigan; and a letter dated March 9, 1952, secured from a civilian passenger giving his address in Massachusetts. While some of this evidence consists of generalities and conclusions, there is sufficient specific evidence, if believed, to support the discipline assessed.

The Claimant, who has a clear 23-year record, categorically denied all of the charges made by the passengers. There was also produced on his behalf a supplemental letter from one of the Conductors evincing surprise at the charges and certifying to Claimant's generally satisfactory performance of duty during the trip in question.

The claim is made that Claimant was denied a fair hearing because the charges were supported only by the hearsay letters and statements. The Carrier offered to adjourn the hearing in order to enable Claimant to verify the charges, but he declined the offer. The use of letters and statements such as these, provided names and addresses are furnished (see Award 891), is established practice (Awards 2541, 2637, 3109, 4771, 5667, 5883, 5974 and 6045). The contention that Claimant was denied a fair and impartial hearing is not sustained.

There was a conflict between the passengers' and Claimant's version of what happened. It is not our function to resolve such conflicts; and we

are unable to conclude that the action taken by the Carrier was unreasonable, arbitrary, capricious or 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 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 action of the Carrier should be allowed to stand.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1954.