

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

Because The Pullman Company did, under date of July 17, 1952, take disciplinary action against Porter Jennings by giving him an actual suspension of five (5) days on charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Jennings to be cleared of the charge in the instant case, and for him to be reimbursed for the five (5) days' pay lost as a result of this unjust and unreasonable action.

**OPINION OF BOARD:** The Carrier deadheaded Claimant from Chicago to Oakland where he was given an assignment Oakland to Chicago with reporting time of 5:00 A. M. June 5, 1952 at Oakland Pier. As the result of occurrences the night before, Claimant failed to protect the assignment.

The charge is: "You failed to protect the above described assignment."

The following facts are undisputed. Claimant went to a burlesque theater, purchased a ticket and got into an altercation with the manager of the theater as a result of which a police officer was called who caused the manager to refund the admission price and then placed Claimant under arrest. He was booked for drunk and disorderly conduct, passed the night in jail, was called into court the next morning about 9 A. M. and sentenced to 5 days in jail or \$25.00 fine. Claimant did not have sufficient funds to pay the fine and he was not permitted to call the Carrier until about 10:30 A. M. on June 5. One of the Carrier's Inspectors called for Claimant and paid the fine for which Claimant reimbursed him. As a result of Claimant's failure to report for his assignment his car moved from Oakland to Ogden without a porter.

Claimant admits that there was an altercation with the manager and asserts that it arose over his being put in a back row seat when he had purchased and paid a higher price for a front row seat and that, when the manager threatened to call the police, he waited outside at the booth for about 30 minutes until the police arrived.

On the other hand there was before the Superintendent at the hearing an unauthenticated and unsigned copy of an Oakland Police Department Arrest and Booking Report dated 4 June '52 time 23:00 naming Claimant and carrying the notation,

"The above was drunk and exposed to public view. Was creating a disturbance in front of the El Rey Theater, because he was not allowed to enter the theater on account of his condition."

The record also contains a statement that the Carrier attempted to obtain a certified copy of the court record, but was unable to do so by reason of a court reorganization in Oakland. This formal want of the court record is supplied, however, by Claimant's admission that he was booked, charged and sentenced for drunk and disorderly conduct.

Claimant has a clear 15-year service record.

Rule 60 provides:

"An employe unable to report for duty for any cause shall notify his supervisor, in advance, if possible, otherwise as soon as conditions permit, preferably in writing."

**First.** The argument is made that, since Claimant was in jail and was denied the use of a telephone, no infraction of Rule 60 is shown because he did telephone as soon as conditions permitted. But the Rule is stripped of practically all meaning if personal fault is as much of an excuse for inability to report as conditions over which the employe has no control. We are unable to agree with any such interpretation of the Rule (compare Award 3984).

**Second.** To sustain this claim, as urged on this record, would involve our weighing Claimant's credibility, the social attitudes of Oakland burlesque theater operators on San Pablo Avenue and the general integrity of the Oakland police system.

Upon the record presented here, it is not established that the action taken by the Carrier was unjust, unreasonable, arbitrary 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 Employe involved in this dispute are respectively Carrier and Employe 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