

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 Robert Cole, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of Birmingham, Alabama.

Because The Pullman Company did, under date of September 20, 1952, take disciplinary action against Porter Cole by giving him an actual suspension of fifteen (15) days, which action was taken on charges unproved and was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Cole to be cleared of the charge in this case, and for him to be reimbursed for the fifteen (15) days' pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: Claimant was removed from his car prior to departure in circumstances related by a Stenographer-Clerk, a Night Agent and a Foreman substantially as follows: that he walked unsteadily and was unable to coordinate his movements; that his eyes had a glassy look and the pupils were dilated; that he talked thickly; and that he had a peculiar odor on his breath. It was concluded to have him examined by a Company physician; and he fell asleep while these arrangements were being made and again on the way to the doctor's office.

The doctor's report shows: that Claimant admitted having been drinking the day before; that although his gait appeared to be normal and no odor of alcohol could be detected on his breath, his thick tongue when talking and his eyes showed he had been drinking. The diagnosis was: "Evidence of having been drinking. Probably a hangover from the day before." And the doctor's recommendation was that it was best for him not to make the trip.

Claimant denied that he had been drinking, that day or the day before. He also produced a letter from his dentist who certified to the extraction of "a very hard tooth" the week before and to two visits at his office thereafter, one of them the day before these occurrences. The dentist advised use of a mouth wash to which Claimant attributed his "breath."

Claimant has a clear 10-year service record.

The charge is:

"You reported for the above assignment under the influence of an intoxicant and were not in fit condition for service, as a consequence of which you were removed from the assignment."

There is no claim or proof here, as there was in Award 5277, that Claimant was denied a fair hearing. There the Carrier acted on a mere showing of dubious appearances without the benefit of a recommended medical examination. Here, on the other hand, the Carrier's determination is supported by both lay and medical evidence.

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 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.