Award No. 6576
Docket No. PM-6595

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of G. W. Holmes, who is now, and for some time past has been, employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company as a porter operating out of Chicago, Illinois.

Because the Chicago, Milwaukee, St. Paul & Pacific Railroad Company did, under date of January 28, 1953, take disciplinary action against Porter Holmes by giving him a ten (10) days' actual suspension, which action caused Porter Holmes to lose not only ten (10) days pay, but twenty (20) days pay; said action having been based upon charges unproved.

Further, because Porter Holmes did not have a fair and impartial hearing as provided for under the rules of the Agreement.

And further, for the record of Porter Holmes to be cleared of the charge in this case and for him to be reimbursed for the twenty (20) days pay or more lost as a result of this unjust action.

OPINION OF BOARD: Claimant was charged and tried jointly for three separate offenses, for all three of which an unsegregated ten-day suspension was imposed.

> **Charge 1.** "For failure to detrain at Portage December 22, 1952, disregarding instructions requiring you to do so."

There is no dispute about the facts. Instruction to Porters Rule 95 provides:

> "95. Conductors and porters should be on duty at all station stops with step box ready for use if necessary . . ."

The official time table shows a two-minute stop for this train at Portage 6:05 P. M. There were four Pullman cars on the train and Claimant's car was first behind the coaches with three cars behind him. It was raining. Claimant opened his door half way and looked out. There was nobody in sight. A Porter Instructor, who Claimant knew was on the train, called to him from one car length away saying "Hit the ground." Claimant obeyed this instruction and detrained. The stop was half a minute. Claimant had no passengers either detraining or entraining at Portage.

If we are to indulge in conjecture, it would be entirely reasonable to assume that Claimant would not have detrained at Portage, if he had not been instructed to do so. But the fact of the matter is that he did not fail to detrain and he did not disregard instructions to do so. It would be arbitrary, capricious and unreasonable to sustain a charge on mere supposition or conjecture; and there is nothing else in this record to support this charge.

Charge 2. "For failure to be properly uniformed when receiving passengers at Portage."

This charge is clearly sustained. Claimant himself admitted at the hearing that he was familiar with the regulations which require that blue coats be worn on the platform at certain times of the year and that, contrary to the regulations, he had on his white coat on this occasion.

Charge 3. "For use of profane language when cautioned by authorized representatives of the Carrier regarding detraining to receive passengers and to wear proper uniform."

Claimant categorically denied that he used any profane language. But if his denial is disregarded entirely, there is no evidence to support the specific charge made.

The most that appears is that Claimant said something that, to the Porter Instructor, "sounded like 'GO TO HELL'." A great many words denoting docility, acquiescence or submissiveness may "sound like go to hell." A Conductor who heard the conversation does not support the charge of profanity. His hearsay report is that Claimant "made an insubordinate remark."

Vague and general statements of comparison or conclusion, rather than of fact, are not sufficient to support a charge such as this (see Award 4684).

First. It thus appears that only one of these three joint charges finds sufficient support in the record to stand up here. It also clearly appears that the suspension assessed by the Carrier was measured in term of three offenses and not one. Since our function is, not to assess, but simply to review, we have no alternative except to set aside the suspension in its entirety (Awards 2298 and 5277).

Second. The suspension assessed was for ten days but, by reason of Claimant's assignment in a twelve man run, his actual wage loss suffered was one trip, or twelve days, not ten and not twenty days (Rule 57).

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

The Agreement was violated; Claimant's record should be cleared of all three charges; and the consequent wage loss sustained by Claimant is twelve (12) days' pay.

AWARD

Claim sustained in accordance with the foregoing Opinion and Findings.

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.