

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of P. C. Nelson, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of Jacksonville, Florida.

Because The Pullman Company did, under date of August 17, 1953, take disciplinary action against Porter Nelson by giving him an actual suspension of thirty (30) days, which suspension now appears on his record.

And further, because Porter Nelson has not been proved guilty of the charges preferred against him beyond a reasonable doubt, and the penalty therefore was unjust, unreasonable, and in abuse of the Company's discretion.

And further, for the record of Porter Nelson to be cleared of the charge in this case, and for him to be reimbursed for any wages lost as a result of this unreasonable action.

OPINION OF BOARD: Claimant with 34 years' seniority and with no past record was disciplined by reason of an incident occurring while he was on duty as a Pullman Porter on Car Lake Russell, Line 2240, Jacksonville, Florida to Chicago, Illinois, April 17-19, 1953. He was relieved of his assignment at Somerset, Kentucky, was placed in jail and later fined \$7.80, the charge being that he had been drinking intoxicating liquors. After a hearing he received a 30 day suspension.

The Organization, petitioner herein contends that the evidence failed to show, "beyond a reasonable doubt" that the charge was true and that there is evidence to show that a reasonable doubt exists as to whether Claimant was sick or drinking intoxicating liquors. It is contended that Claimant was ill and that no member of the train crew smelled liquor on his breath. Cited in support of this contention is Rule 49 which provides in part:

"Discipline shall be imposed only when the evidence produced proves beyond a reasonable doubt that the employe is guilty of the charges made against him."

Respondent Carrier takes the position that Claimant admitted drinking intoxicating liquors, was belligerent and entered a plea of guilty to the charge of Breach of the Peace in police court after spending the week-end in jail. Also

that there is evidence in the record that city policemen at Somerset smelled liquor on Claimant's breath; likewise other witnesses testified that his actions were not normal. Citing Award 6108, 6103, 4840 and others, in support of the position taken.

On the proposition of proof see recent Award 6924 in which there appears a detailed resume of definitions of the meaning of proof "beyond a reasonable doubt". By reason of this award we do not deem it necessary to go into detail herein on that subject.

There exists some conflicts in the evidence which is usual in such cases. Claimant contends that he would have entered any kind of a plea to be released from jail and did make admissions to bring the matter to a conclusion. The charge was changed from drunkenness to breach of the peace.

In view of this Claimant's past good record, his many years of seniority standing and conflicts in the evidence, we believe that he should have been given the benefit of the doubt in this case. As we understand the record there is no money involved and therefore there will be no finding on this point.

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 agreement was violated and claim should be sustained to the extent indicated in the Opinion and his record cleared.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.