

Award No. 6927
Docket No. PM-7003

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 T. Galloway, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the Chicago Western District.

Because The Pullman Company did, under date of September 22, 1953, take disciplinary action against Porter Galloway by assessing his service record with a "Warning", which action was unjust, unreasonable and in abuse of the Company's discretion.

And further, because the charges were not proved beyond a reasonable doubt against this employe as is provided for in the rules of the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys in the service of The Pullman Company in the United States of America and Canada, represented, by the Brotherhood of Sleeping Car Porters, Revised, Effective January 1, 1953.

And further, for the record of Porter T. Galloway to be cleared of the charges in this case, and for the penalty exacted (a "Warning") to be expunged from his service record.

OPINION OF BOARD: Claimant was employed as porter and assigned to service on car Silver Prairie, No. 472, Line 125, CB&Q Railroad, Train 47, leaving Chicago, Illinois, June 22, 1953, en route to Minneapolis, Minnesota. On this trip it is alleged that Claimant called Conductor E. L. Peterson an obscene name and used the same obscene name about Superintendent L. J. Bartholomew when the conductor talked to him about the space he was to occupy during his rest period. Claimant was disciplined after a hearing at which both the conductor and claimant appeared and the extent of the action taken was a "Warning."

We have reviewed the record and consider the assessment of discipline to have been mild and therefore reach the conclusion that the claim be denied.

In this record we are again confronted with the situation of difficulty in developing the evidence by reason of claimant on advice refusing to answer questions. We have repeatedly passed on this question, see Awards 2945, 2946, 3218, 4704, 4749, 5104, 5974 and 6120, with disapproval, stating in brief, in Award 2945:

"We note from an examination of the record that Allen's Representative refused to permit a cross-examination of Allen regarding the mis-conduct charged on the theory that the burden of proof was on the Carrier and that the accused could not be required to answer questions that might aid in properly deciding the case. In this, the Representative was in gross error. At a hearing of this kind, the Carrier may properly examine the accused concerning every point bearing upon his innocence or guilt, whether or not he testifies in his own behalf. Truth and not technicality should be the controlling factor in the making of decisions of this kind."

and we again reaffirm that principle.

On the record made in this case this claim must fail. Apparently claimant refused to recognize constituted authority. Carrier's hearing officer conducting the hearing had the opportunity of observing at first hand the demeanor and to judge the conduct of those testifying and we should not substitute our judgment for that exercised in the discipline assessed.

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 there was no violation of the Agreement.

AWARD

Claim denied in accordance with 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.