

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of T. H. Ocampo, who is now, and for sometime past has been, employed by The Pullman Company as an attendant operating out of the Chicago Commissary District.

Because The Pullman Company did, under date of January 26, 1954, take disciplinary action against Attendant Ocampo by assessing his record with a "Warning," which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, because it was not proved beyond a reasonable doubt that Attendant Ocampo was guilty of the charge 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 Attendant Ocampo to be cleared of the charge in the instant case, and for the penalty (a Warning) to be expunged from his record.

OPINION OF BOARD: Claimant T. H. Ocampo, with 26 years of service and a previous good record was disciplined by reason of an incident occurring while he was on duty as attendant on car Spokane Club, Line 562, Chicago, Illinois-Seattle, Washington. The record shows as developed at the hearing given Claimant that he was serving drinks on this club car to a party en route to attend a convention or a meeting of an association, and that quite a number of drinks were served prior to the alleged incident which resulted in Claimant being disciplined to the extent of a "Warning" being placed against his record. He was charged with having been disrespectful to a passenger. However, the passenger to whom it is alleged the disrespectful words were addressed, made no complaint. The only evidence from passengers being from a man who stated he was in the club car when the incident occurred, but who was not a member of the party being served with drinks, his status apparently being that of a person observing the conduct of other persons in the car.

It is apparent from the mildness of the disciplinary action taken that there was a doubt in the mind of Carrier's hearing officer with reference to the evidence presented at the hearing that Claimant was guilty as charged.

We consider from the evidence that this is a case in which honest minds might differ and believe there is a reasonable doubt as to Claimant's conduct which should inure to his benefit. However, we reaffirm our previous Awards in the matter of the refusal to answer questions in hearings of discipline cases on the part of the one accused. We cannot condone this practice of the Organization's Representative in refusing to permit the answering of questions seeking to develop the truth in the matter under consideration, on the theory that rules of evidence in criminal proceedings prevail in these hearings. These hearings are conducted in accordance with contract provisions and are civil in character, not criminal, are also informal and do not come within rigid rules of procedure as in court actions involving the trial of a person charged with a crime. See on this subject Awards 4749, 5104, 5974 and 6120.

In the instant case we do not believe the evidence to be of a character warranting the action taken as there seems to be a decided and reasonable doubt in favor of Claimant on this record.

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 the claim is sustained and Claimant's record should be cleared.

AWARD

Claim sustained 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.