

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

**ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM**  
**THE PULLMAN COMPANY**

**STATEMENT OF CLAIM:** The Order of Railway Conductors, Pullman System, claims for and in behalf of Conductor C. B. Powell, Wilmington, N. C., Agency, that:

1. The Pullman Company acted arbitrarily and capriciously in abuse of its discretion when under date of April 17, 1953 the Company discharged Conductor Powell from the service of the Company.
2. We now ask that Conductor Powell be restored to service with all rights unimpaired, and paid for all time lost.

**OPINION OF BOARD:** Claimant was discharged from the service of the Carrier for being under the influence of intoxicating liquor while on duty as a Pullman Conductor on March 16, 1953. The claim is that the Claimant, Pullman Conductor C. B. Powell, be returned to the service of the Carrier with his seniority rights unimpaired and be paid for all time lost.

The record shows that Claimant, on March 16, 1953, was assigned in regular service between Wilmington, Delaware, and Atlanta, Georgia. At Florence, South Carolina, he was removed from the train for the reason that he was under the influence of liquor. He was given an investigation and discharged from the service.

Much evidence was adduced at the investigation which need not be repeated here. Suffice it to say that the evidence amply sustains the charge made. The claim is made that the punishment inflicted was excessive. In a consideration of this phase of the claim we take note generally of the following facts: Conductor Powell was employed as a Pullman Conductor on October 24, 1943. He had therefore been in service for more than nine years. He had been warned twice previously by the Carrier; once for lounging in a vacant compartment, and once about his drinking. He was fully informed that it was contrary to the rules of the Pullman Company and the Atlantic Coast Lines to indulge in the use of intoxicants while on duty. He admitted taking a drink some four hours before reporting for duty. The record discloses that he associated with two marines on his car who had whiskey in their possession and became intoxicated on the train. The circumstances are such as to establish that Powell drank with them. The present charge is the first that had been lodged against him. There is no evidence that he had failed to properly discharge his duties before being removed from the train.

The Claimant had a fair hearing. His guilt was established beyond question. He was fully aware of the rules. We find no mitigating circumstances

that renders his discharge arbitrary or unjust. Under such circumstances we can find no reason to interfere with the discipline assessed by the Carrier. The controlling rule is: Although the Board has the power to modify the discipline assessed against an employee found guilty of a violation of rules, it should act cautiously in doing so. It is only when the evidence clearly indicates that the Carrier acted arbitrarily, in bad faith, or without just cause under all the circumstances, that the intervention of this Board is permissible. Such a situation does not here exist and consequently we find no reason to interfere with the action of the Carrier.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST. (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1955.