

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of B. Jolivette, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Chicago Southern District.

Because The Pullman Company did, under date of March 12, 1954, take disciplinary action against Porter Jolivette by giving him an actual suspension of nine (9) days, which action was based upon charges unproved, and was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

Further, because the charges against this employe were not proved beyond a reasonable doubt as is provided for in the Agreement between The Pullman Company and its Porters, Attendants, Maids and Bus Boys 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 Jolivette to be cleared of the charge in this case, and for him to be reimbursed for the nine (9) days pay lost as a result of this unreasonable action.

OPINION OF BOARD: The claimant, Porter B. Jolivette, was given an actual suspension of nine days after a hearing on the following charge relating to his service on December 10, 1953:

"You engaged in an angry dispute with Conductor E. McKernan during the course of which you struck him and knocked his glasses to the floor."

The claim is for Jolivette to be cleared of the charge and to be reimbursed for the pay he lost as the result of being suspended. In the submission, the basis for the claim is that Jolivette was not proved guilty of the charge beyond a reasonable doubt as required by Rule 49 of the Agreement. At the hearing before the referee, a second basis for the claim was advanced, namely that the Carrier cited no specific rule which was violated by Jolivette's conduct.

For reasons set forth in Award No. 7139, we find no merit in this latter contention. It is inherent in the duties of a Pullman porter's position that he must refrain from angry disputes and physical violence while on duty.

The contentions of the parties with respect to the effect of Rule 49 on this Board's authority to review discipline cases arising thereunder have been discussed at length in Award No. 7140, and need no repetition here.

The only question before the Board is whether the evidence in the record is sufficient to support a finding by the Carrier that claimant was guilty of the charge against him beyond a reasonable doubt.

The evidence shows that through no fault of claimant, a passenger on his train was carried beyond his destination. This occurrence led to a discussion between claimant and Pullman Conductor McKernan, in the course of which, according to McKernan, claimant shouted that he was not to blame, grabbed and struck at McKernan, knocked his glasses off and scratched his face. McKernan repeated his version of the incident in a written statement and also orally at the hearing. There were no witnesses to the occurrence, but Passenger Agent Register in a written statement avers that he noticed scratches on McKernan's face which appeared fresh.

Claimant's written statement sets forth that the Conductor hollered at him, braced himself against claimant, struck his eye and broke his glasses. He then says:

"I threw both hands up to protect myself and in the commotion his (McKernan's) glasses fell off."

At the hearing, under questioning by his representative, claimant denied striking McKernan but stated that after the altercation he saw a red mark—not a scratch—on McKernan's face. It must be noted here that although McKernan was questioned at length by claimant's representative, claimant refused to answer questions put to him by the Carrier representative either about his statement concerning McKernan's glasses or the mark on McKernan's face. As has been stated by the Board on numerous occasions, such refusal is unjustified under the rule and subjects the claimant to inferences that his replies, if made, would have been unfavorable to him.

We think that based on the evidence presented and on the inexcusable refusal of claimant to answer the relevant questions put to him at the hearing, the Carrier was justified in finding that there was no reasonable doubt that claimant engaged in an angry dispute with McKernan, and that in the course of it he struck McKernan and knocked his glasses off.

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

The Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1955.