

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 R. L. Cook, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Chicago Eastern District.

Because The Pullman Company did, under date of June 11, 1954, take disciplinary action against R. L. Cook by giving him an actual suspension of ten (10) days; which action was unjust, unreasonable, arbitrary and in abuse of the Company's discretion.

And further, because the charges made against Porter Cook were not proved beyond a reasonable doubt as 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 Cook to be cleared of the charges in this case, and for him to be reimbursed for the ten (10) days pay lost as a result of this action taken against him by the Company.

OPINION OF BOARD: Porter R. L. Cook was suspended for five days on each of the following two charges:

"(1) While assigned to service as porter on car CENTAMIA, line 4515, leaving Chicago, Illinois February 18, 1954, Santa Fe train No. 123, you were discourteous to two women passengers when you informed them it was customary to tip the Porter.

(2) While assigned to service as porter on car CENTNOME, Line 4515, leaving Los Angeles, California, February 22nd, 1954 on Santa Fe train No. 124 you made discourteous remarks to the passengers in lower 7 in your car from Los Angeles, California to Barstow, California and transferring to Compartment B in your car for the remainder of the trip to Kansas City, Missouri, when they questioned you regarding preparation of berths, dining car service and operation of heat controls."

Claimant contends that the charges were not proved beyond a reasonable doubt as required by Rule 49 of the Agreement.

The evidence as to the first charge is a letter from a woman passenger to the effect that after she and another woman passenger were transferred from one car to another at their request, Claimant brought their luggage to them at their new location and stood there for quite a while, finally saying: "Ladies, I won't see you anymore. Do you know it is customary to tip a porter?" In addition, there is a written statement from Pullman Conductor Koonce to the effect that the two women related this incident to him shortly after it occurred. The second of the two passengers was never identified and there is no statement from her in the record.

The evidence as to the second charge is a letter from a woman passenger to the effect that she and her husband had arranged to have tea and ice cream served to them in their space, and that when it did not arrive she inquired of Porter Cook, who replied in a "discourteous, short and snippy" manner: "What do you want me to do about it?" Also that she mentioned to Cook that the compartment was warm, and asked if the heat could be controlled in any manner, to which he answered: "There is a sign in the room that tells you what to do." And finally she states that she asked Cook to make their bed up early and he replied: "I will make it when I get time," and did not make it up until 9:05 P. M. In addition, there is a report from Depot Passenger Agent Ratliff at Kansas City that he received a report there from these passengers that the porter was discourteous and negligent and failed to make their beds early when so requested; and that, upon being questioned about the beds, he had replied that he had other work to do besides waiting on them.

The only person who testified at the hearing was the Claimant. He denied the specific charges and gave other versions of each of the incidents referred to. He testified at some length in answer to questioning by his own representative and by the representative of the Carrier. During the course of his testimony, he refused to answer certain questions put to him by Carrier's representative. This practice is unjustified under the rule and has been criticized by this Board on many occasions; Carrier had a right to question Claimant in its effort to develop all the facts relevant to the charges against him.

The record thus reveals conflicting statements and testimony, with credible evidence on both sides. As to the first charge, there is evidence from only one of the two passengers directly involved. As to the second charge, it must be noted that none of the alleged offending statements by Claimant is discourteous *per se*. These statements—"What do you want me to do about it?", "There is a sign in the room that tells you what to do," and "I will make it when I get time"—may be discourteous or courteous depending upon the circumstances under which they are made and the tone and manner of their utterance. As to these, there is the uncorroborated statement of the passenger against the denial of the Claimant.

On this state of the record, we think that there is a reasonable doubt as to Claimant's guilt, and therefore that the Carrier has failed to sustain the burden of proof set forth in Rule 49 as a prerequisite to the imposition of discipline. See Award No. 7140.

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 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 violated.

AWARD

Claim sustained.

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.