# Award No. 7213
# Docket No. PM-7188

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**H. Raymond Cluster, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF SLEEPING CAR PORTERS

## THE PULLMAN COMPANY

**STATEMENT OF CLAIM:** * * * for and in behalf of D. Draper, 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 January 26, 1954, take disciplinary action against D. Draper by assessing his records 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 Porter Draper was guilty of the charges 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 Draper to be cleared of the charge in this case and for the penalty (a Warning) to be expunged from his record.

**OPINION OF BOARD:** Porter Draper was disciplined by a "Warning" after a hearing on the following charge:

"You laughed derisively at the above mentioned passenger when the conductor was attempting to adjust the passenger's complaint regarding the damage to his property."

Claimant contends that the claim should be sustained on the procedural ground that he was not furnished a copy of the "original letter of complaint" within 30 days after date of receipt by Management, as required by Rule 49. The record shows that the incident which is the subject of the charge occurred on November 16, 1953. A report of the incident was filed with the Carrier by Conductor Rogers on the next day. Under date of December 4, 1953, the passenger involved in the incident wrote a letter of complaint to the Carrier. Porter Draper never saw the passenger's letter until the hearing, which was held on January 11, 1954. He had received a copy of Conductor Rogers' report prior to the hearing, but the record is not specific as to when he received it.

At the hearing, Claimant took the position that the "original letter of complaint" as intended by the rule was the passenger's letter. Carrier contended that the Conductor's report was the "original letter of complaint" within the meaning of the rule. It cannot be disputed that on many occasions charges against Pullman porters originate with Pullman conductors and are brought to the Carrier's attention by a report from the conductor involved, without any action on the part of a passenger. To hold that a conductor's report cannot be a "letter of complaint" under the rule would be to disregard these cases, and would be an interpretation surely not intended by the parties. On the other hand, a letter from a passenger can also be the "original letter of complaint" under the rule. The question must be decided on the facts of each particular case. In this case, we feel that the conductor's report was the original letter of complaint within the rule, and that there are sufficient facts in the record—particularly Claimant's written report of the incident dated December 8, 1953, and made at Carrier's request—to support a finding that Claimant received a copy of the report within the appointed time. In any case, we can find no evidence that Claimant lacked knowledge of the facts surrounding the charge against him or was prejudiced in his rights in any fashion.

Turning to the merits of the case, the question is whether the evidence supports a finding by the Carrier that the charge against Draper was proved beyond a reasonable doubt. See Awards 7140, 7193. The evidence against Draper consists of a letter from a passenger to the effect that he found his luggage damaged, and that while discussing an adjustment of the matter with the conductor, he remarked "that the cost of the damage was about the amount of the tip I had given to the porter. At this remark, the porter let out a sarcastic laugh and retreated into the Pullman Car. I followed him and found his name to be Mr. D. Draper."

The conductor's report states as follows:

> ". . . Mr. Molloy (the passenger) said in a loud voice, 'The Porter could have returned my tip when he knew he had damaged my case.' A loud laugh came from the direction of the car which caused Mr. Molloy to return to the car and demand the name of the Porter. Mr. Molloy was prevailed upon to accompany the writer which he then did but he was in a very angry mood. Loud laughs were heard as we left.
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> "Mr. Molloy . . . claims the Porter laughed at him. This the writer cannnot verify as red caps and others were on the platform."

Porter Draper, both in his written report and in his oral testimony at the hearing, denied laughing at the passenger. In addition, he testified that he heard laughter at the time but did not know who laughed, since there were "seven or eight people there, car cleaners, red caps, electricians."

Neither the passenger nor the conductor testified at the hearing.

It is obvious from an examination of the evidence that the unsupported written statement of the passenger is the only basis for a finding that the Claimant laughed at him. Against this is the Claimant's denial, both written and oral, and his statement, supported by the Conductor's statement, that there were several other persons who could have done the laughing. When there is further considered the complete failure of the Conductor's statement to corroborate the passenger's statement that it was Draper who laughed, and the fact that the Carrier's representative who conducted the hearing had no opportunity to observe and thus judge the credibility of the passenger, it must be concluded that the evidence of record did not justify a finding on his part that the charge was proved beyond a reasonable doubt.

**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 Employes involved in this dispute are respectively carrier and employes 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 24th day of January, 1956.