

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 C. Bootche, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of St. Louis, Missouri.

Because the Pullman Company did, under date of March 2, 1954, take disciplinary action against Porter Bootche 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 Porter Bootche 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 Bootche 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:** Porter Bootche was disciplined by a "Warning" after a hearing on the following charge:

"On December 26, 1953, you were assigned to operate as Porter in service on car LAYLAND, extra Line 3576, Wabash Train #10, leaving St. Louis, Mo., December 27, 1953, enroute to Chicago, Ill.

"\* \* \* You failed to protect the above described assignment."

Claimant contends that the charge was not proved beyond a reasonable doubt as required by Rule 49. He admits that he did not fill the assignment described in the charge, but asserts that he was not instructed by the sign-out clerk to report in time to fill that particular assignment.

The evidence at the hearing consisted of a written statement by a sign-out clerk to the effect that on December 26, 1953, he told Porter Bootche over the telephone that "he fell due an assignment for extra car on Wabash #10 reporting at 11:00 A. M., December 27th in the station, loading number 26, extra line 3756, enroute Chicago; also advised him receiving time was

11:30 A. M. and train departed at 12:00 Noon." There was also introduced a written statement by another signout clerk that between 11:30 and 11:45 A. M. on the 27th, he was informed that Bootche had not reported for his car. He called Bootche to inquire and Bootche said that he had no recollection of receiving an assignment on Wabash #10. Bootche was then told to report for station duty and when he arrived he said that he had forgotten about the assignment.

Bootche stated both in writing and orally at the hearing that he was told by the clerk with whom he spoke on the telephone on the 26th that he was to report at 12:15 on the 27th, and was not told the train's time of departure. When asked whether he had made other trips on this particular train, Bootche refused to answer; he also did not answer whether he had been told the train number.

Carrier's submission contains the uncontroverted statement that Wabash #10 carried five extra cars on the 27th in addition to the one involved here and that five extra porters other than Bootche were assigned to these cars during the signout period on the 26th. All of these other porters reported at the proper time and covered their assignments. In view of this fact, and of Porter Bootche's refusal to answer obviously pertinent questions, we think the Carrier was justified in finding that the charge against him 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 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 24th day of January, 1956.