

Award No. 7217

Docket No. PM-7317

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 E. J. Hunter, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Chicago Western District.

Because The Pullman Company did, under date of June 17, 1954, take disciplinary action against E. J. Hunter by assessing his record with a "Warning", which action was unjust, unreasonable, arbitrary and in abuse of the Company's discretion.

And further, because the charge made against Porter Hunter was 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 Hunter to be cleared of the charge in this case, and the penalty (a "Warning") to be expunged from his service record.

OPINION OF BOARD: Porter E. J. Hunter was disciplined by a "Warning" after a hearing on the following charge:

"While on duty . . . you threatened Conductor R. Layman by stating to him, 'If you hit me, I'll kill you.'"

Claimant contends that the charge was not proved beyond a reasonable doubt as required by Rule 49. In this case, the evidence consists of written statements by Porter Hunter and Conductor Layman and also the oral testimony of each of them at the investigation. Their statements and testimony are flatly contradictory; Hunter denies unequivocally that he made the statement attributed to him by Layman. However, although Layman had already been cross-examined by Hunter's representative earlier in the investigation, Hunter refused, on the advice of this representative, to answer any questions asked by the Carrier representative, even though they were directed squarely to the issue involved and might have helped to shed more light on what actually occurred.

In view of this failure, and also of the important fact that in this investigation the hearing officer had both witnesses before him and thus could

formulate his conclusion as to which was more worthy of belief through observation of their conduct and demeanor as they testified, we cannot find that he was unjustified in concluding that the charge against Hunter 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 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

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.