

Award No. 7218

Docket No. PM-7375

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 F. O. Pringle, who is now, and for a number of years past has been, employed by The Pullman Company as an attendant operating out of the Chicago Commissary District.

Because The Pullman Company did, under date of June 25, 1954, discipline Attendant Pringle by assessing his service record with a "Warning", which action was based upon charges unproved.

And further, because the charges upon which the disciplinary action was based were not proved beyond a reasonable doubt as it is provided for under the rules of the Agreement with The Pullman Company governing the class of men of which Attendant Pringle is a part.

And further, for the record of Attendant F. O. Pringle to be cleared of the charge in this case, and for the penalty (a Warning) to be expunged from his service record.

OPINION OF BOARD: Attendant F. O. Pringle was disciplined by a "Warning" after a hearing on the following charge:

"You were smoking on duty."

Claimant contends that the charge was not proved beyond a reasonable doubt as required by Rule 49. The evidence consists of written statements and oral testimony by Assistant Commissary Wintz and Claimant, and written statements by another Attendant and a Bus Boy. According to Wintz, he saw Claimant standing in the kitchen smoking a cigarette. He reprimanded Claimant and Claimant stated he was sorry. He informed Attendant Smith of the incident and told him to keep watch on the employees under his jurisdiction to see that they did not smoke while on duty.

Claimant denies that he smoked on duty and further denies that Wintz ever said anything to him about smoking.

Attendant Smith did not see Claimant smoking, but states that Wintz spoke to him—Smith—about Claimant's smoking, thus corroborating Wintz in that regard. Bus Boy Guerrero did not see Claimant smoking and had no conversation with Wintz about it. However, he overheard a conversation be-

tween Attendant Smith and Bus Boy Militante to the effect that Wintz had been talking to Claimant about smoking in the kitchen.

There was also a difference between Claimant and Wintz as to which entrance of the dining car was open at the time of the incident. In this connection, Wintz's testimony is corroborated by the statement of Bus Boy Guerrero.

In view of the fact that Wintz spoke to another employe about Pringle's smoking immediately after the event occurred, whereas Claimant denies that Wintz even mentioned smoking, and that Claimant's testimony is at variance with that of Wintz and Guerrero as to the dining car entrance, we cannot hold that the Carrier was unjustified in crediting Wintz's version and finding that the charge against Claimant 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 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.