

Award No. 7325
Docket No. PC-7354

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS & BRAKEMEN,
PULLMAN SYSTEM**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakeman, Pullman System, claims for and in behalf of Conductor A. M. Parker, Chicago South District, that:

1. Rule 49 of the Agreement between The Pullman Company and its Conductors was violated by the Company on March 19, 1954, when Conductor Parker was disciplined without benefit of a fair and impartial hearing. Specifically:

(a) No full and exact copy of the letter of complaint was ever furnished to Conductor Parker;

(b) Conductor Parker's primary accuser was never named;

(c) Mr. R. A. Gardner, Assistant to Supervisor, Labor Relations, The Pullman Company, usurped and improperly exercised the function of presiding officer of the hearing accorded Conductor Parker;

(d) The Letter of Charge, dated March 19, 1954, and signed by Mr. J. B. Kenner, Superintendent, The Pullman Company, clearly and directly discloses that Conductor Parker had been prejudged and held guilty by Mr. Kenner in advance of the hearing to be conducted by Mr. Kenner.

2. The discipline assessed against Conductor Parker was arbitrary, capricious, unreasonable and improper. Specifically:

(a) Conductor Parker was held responsible for duties specifically stated by The Pullman Company to be outside of the scope of a Pullman Conductor's responsibility;

(b) The disciplining of Conductor Parker was directly contrary to principles established by National Railroad Adjustment Board Awards.

3. Conductor Parker's record be cleared of this improper action by the Company.

4. Conductor Parker be compensated for all time lost as covered by the Memorandum of Understanding concerning compensation for wage loss found on page 85 of the Agreement, as a result of this improper action by the Company.

OPINION OF BOARD: The facts set forth in this record are extensive. While some material facts are matters of record and are not in dispute, certain others are controversial.

Pullman Conductor A. M. Parker was assigned to the cars of Line 526, part of the consist of Illinois Central Train No. 3 out of Chicago on October 29, 1953. After No. 3 left Kankakee, Illinois, Conductor Parker was approached by coach passenger F. J. Miller, with a request for Pullman accommodations for himself and his wife who were going to Memphis, Tennessee. Conductor Parker informed Mr. Miller that Pullman space was available. The Pullman Conductor thereupon collected the proper Pullman fare and issued a receipt.

It was also necessary for passenger Miller to pay a "step-up" fare to convert his coach ticket to first class fare. While the Organization points out that current instructions on this Carrier's property are to the effect that the collection of step-up fares is the duty of the train conductors and not the pullman conductors, nevertheless Pullman Conductor Parker figured the amount of the step-up fare and collected that, as well as the Pullman fare, from the passenger. According to the record Mr. Miller paid \$12.71 for Bedroom I, Car 301, and \$10.70 for the step-up fare. No receipt was given to Mr. Miller for the \$10.70 at the time it was tendered. It was necessary to pay this over to the train conductor and obtain a receipt from him.

The record indicates that Conductor Parker approached Train Conductor Spiker at some point further south, apparently near Champaign, Illinois, and paid a step-up fare of only \$9.10 and obtained a receipt for that amount. While Conductor Parker claims to have taken the receipt to Bedroom I, sounded the buzzer, got no response, and slipped the receipt under the door, Mr. Miller reported that he was not given a receipt for the cash step-up fare, and that no such receipt was found in the room when he and his wife returned from the Club car.

This report from Passenger Miller resulted in an investigation which first involved Train Conductor Spiker. After this hearing, the charge against Spiker was dropped. The record in that case became the basis for the charge in the instant case against Pullman Conductor Parker.

The record is quite clear on one important point. The amount of step-up fare which Conductor Parker turned over to Train Conductor Spiker was only \$9.10, and not the \$10.70 which he had collected from Mr. Miller. We can draw but one conclusion: Conductor Parker, in accepting the cash step-up fare from passenger Miller, assumed a responsibility which he failed to meet. He was obligated to see that the passenger was given a receipt for the amount he had paid. This Claimant failed to do. In failing to perform this obligation, he laid himself open to the charge and the penalty which we are now asked to set aside.

It was not enough to say that it was not Conductor Parker's duty to accommodate the passenger in the way he did. Let us concede that it was not his duty but that of the Train Conductor. However, having assumed the responsibility of collecting the extra fare he had an obligation, to both passenger and employer, to see that the transaction was properly executed.

Many objections have been raised concerning the procedural aspects of this case. We think it unnecessary to reiterate all of this for the record. Some of the delay in making a formal charge against Conductor Parker arose from the fact that Train Conductor Spiker was first investigated in this connection. It was only when he was cleared that it became evident

that Conductor Parker was possibly the guilty one. Claimant was present at both hearings, gave his testimony in both and had an opportunity to clear himself if he were truly innocent.

An investigation of this sort, while it should be fair, is not conducted as a court proceeding. The legal rules of evidence are not necessarily applied. The important thing is to determine the facts of guilt or innocence. The record in this matter is extensive. It is fairly complete. And the preponderance of evidence clearly supports the charge which was made on the property. We find no basis for reversing the conclusion of those whose responsibility it was to take the disciplinary action which the facts of this case warranted.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May, 1956.