

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor J. F. Beatty, Chicago South District, that:

1. Rule 49 of the Agreement between The Pullman Company and its conductors was violated by the Company on October 7, 1955, when the Company discharged Conductor Beatty from the service.
2. This action was not preceded by a fair and impartial hearing as required by Rule 49, but instead:
 - a. The presiding officer at the hearing accorded Conductor Beatty at Chicago on September 14, 1955, (J. B. Kenner) participated in the presentation of the Company's case against Conductor Beatty;
 - b. Hearsay evidence was improperly admitted into the record at this hearing.
3. This action was in arbitrary and capricious defiance of the evidence, particularly:
 - a. The unchallenged testimony of a Pullman employe, Porter Frank Smith, who was present at the time of and in the near vicinity of the alleged assault, cleared Conductor Beatty of this charge.
 - b. The unchallenged testimony of Assistant Superintendent W. C. Edwards (directly substantiated by Superintendent C. K. Ebersole), the two top officials of the Jacksonville District of the Pullman Company who personally inspected Conductor Beatty, cleared him of the charge of being under the influence of intoxicants.

4. The charge against Conductor Beatty be expunged from his record, that he be restored to the service, and that he be credited and paid for all time lost, including vacation rights, as a result of this improper action.

OPINION OF BOARD: Claimant here was charged by Carrier as follows:

"You made an assault upon a woman coach passenger whom you invited into a room in a Pullman car and, further, you were under the influence of intoxicants."

Rule 49 of the applicable agreement provides, in part:

"A Conductor shall be furnished a full and exact copy of the original letter of complaint within 15 days after date of receipt by Management **except that the name and address of a passenger** other than an employe of The Pullman Company or of a railroad company **may be withheld when expressly requested by such passenger.** * * *"

"The right to hear and cross-examine any **witness who is present at the hearing** and testifies shall be accorded Management, the conductor, and/or his representative. * * *" (Emphasis supplied.)

The following is taken from the brief in argument, offered on behalf of the Organization:

"We turn now to a consideration of the * * * more serious charge—that the individual claimant perpetrated an assault upon the person of an unnamed woman passenger.

"The employes readily agree * * * that if and when such misconduct is fairly established, dismissal would be the only proper disciplinary action which should be imposed. For, concededly, the Carrier has undoubtedly responsibilities for courteous, safe and efficient service to its patrons. But on the other hand, Carrier cannot lightly disregard the rights of its employes. That is especially true when, as here, not only the means of livelihood, but the reputation of an employe is involved. * * * And it certainly is this Board's responsibility to examine the record most carefully in order to determine whether or not this has been done. We can only make such a determination by critically examining what is submitted here as evidence.

"This charge, as the Employes point out, must rest on the statement of the anonymous complainant—one 'E. P.' That statement is the ONLY direct evidence we have of the alleged assault. In view of the fact that the statement in reference was prepared on Pullman Company stationery, it is apparent that it was prepared by Superintendent Karr, and purportedly initialed by the complainant. Obviously, the text of the statement is not in the handwriting of the one who initialed it. * * *"

It was initialed "E. P.".

The record shows the original complaint was made by Mrs. E. P.'s husband to Special Agent Bader of the Florida East Coast Railway on July 19, 1955. The trip in question was July 16-17, 1955.

Carrier Superintendent Karr's report of July 20 indicates:

"Investigation was started and Mrs. P.'s description as well as the conductor's remarks, indicated that the individual concerned was Conductor Beatty. Mrs. P. was agreeable to coming to the F. E. C. station today for the purpose of identifying the conductor, and Special Agent Bader arranged to have her located in an inconspicuous place at the station. As soon as Conductor Beatty appeared on the platform, Mrs. P. immediately identified him as the man in question."

The statement of Mrs. E. P., while not handwritten by her, does contain the initials E. P., and according to Carrier was secured by Messrs. Bader and Karr. In addition, Special Agent Bader visited complainant and her husband at their home.

In the statement allegedly initialed by her, Mrs. E. P. states:

"I am very sure that J. F. Beatty is the man that had me follow him from the coach to a Pullman car under the pretense that he was looking after my welfare. "I do not," the statement continued, "wish to have my name or address used as a means of establishing the source of this complaint. I understand that I will not have to appear at a hearing."

Throughout the entire proceeding, Claimant vigorously denied both the molestation and intoxicants charges and proclaimed his innocence.

So far as the record here is concerned, there was a complaint by an unidentified woman passenger asserting she was molested by Claimant; she did not wish her identity revealed, nor did she want to appear as a witness; she identified the claimant, several days later in the presence of Messrs. Karr and Bader as the man who molested her.

We cannot agree with argument in behalf of Organization that

"* * * the record is completely devoid of evidence that Carrier had any independent attempt of its own to make some reasonable, if not painstaking investigation of these matters."

The Carrier here concerned had a right to accept services of Florida East Coast personnel as well as those of its Miami Superintendent C. J. Karr in investigating the complaint.

The fact remains, however, that the contracting parties, in Rule 49 of the Agreement they themselves negotiated, clearly provided that a Pullman conductor can be faced, like Claimant here, with a charge as serious as this from a passenger who can elect, if she so desires, to hide behind the cloak of anonymity.

The other charge against Claimant was that he was under the influence of intoxicants. The time span involved is between 8:00 A.M., and 10:45 A.M.

While argument offered in Organization's behalf states

"the preponderance of competent evidence here before us dictates the conclusion Beatty was NOT under the influence of intoxicants as charged,"

a rundown of the various statements relating thereto shows the following:

8:00 A.M.
Passenger Greer

"* * * an odor that was very definitely alcohol; intoxicated to the point that he could not perform his duties."

8:40 A.M.
Trainmaster Karle

"* * * the odor of whiskey was sickening."

9:15 A.M.
Sergeant Dupree,
Atlantic Coastline,
at Waycross, Ga.

"* * * without a doubt this Pullman Conductor was under the influence of intoxicants. He smelled strongly of whiskey, his eyes were very red and blood shot, his speech was thick and slurred, and he just barely had body control."

9:15 A.M.
Trainmaster Karle,
at Waycross, Ga.

"* * * on arrival at Waycross * * * Beatty had control of himself and was in better shape."

10:45 A.M.
Carrier's Superintendent
and Assistant Superintendent at Jacksonville,
Fla.

"* * * there was no apparent indication that he had been drinking—no odor of intoxicant, stale or otherwise on his breath—and he was in normal possession of his faculties."

In addition, Porters Jenkins, Roberson and Johnson testified Claimant

"* * * did not appear to have been drinking; did not appear to be intoxicated; he was not intoxicated as reported."

The record in this case is voluminous and the pleadings of the Organization in support of its claims are intense.

It has been carefully read, and the argument offered in behalf of the respective parties has been carefully considered. Rule 49 remains, however, and on that basis we must and will decline to substitute our judgment for that of management.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January, 1959.