

Award No. 8845

Docket No. CL-10704

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE UNION TERMINAL COMPANY (DALLAS, TEXAS)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier (The Union Terminal Company, Dallas, Texas) violated and continues to violate the agreement extant between the parties in that:

(1) On November 12, 1957, the Carrier dismissed and separated from its service Red Cap Coleman Tucker, Jr., on unproven charges that he failed to attach Red Cap checks to certain pieces of baggage prior to moving them; and

(2) The Carrier failed and refused to make investigations which, if done, would have proven conclusively that the charges made and the action taken were without foundation; and,

(3) The Carrier shall now be required by an appropriate award and order of the Board to reinstate Red Cap Coleman Tucker, Jr., to its service with all seniority and vacation rights unimpaired, and Red Cap Coleman Tucker, Jr., shall be paid for all time lost.

OPINION OF BOARD: The Claimant was a Red Cap with approximately eight years of service prior to his dismissal on November 12, 1957. His years of service familiarized him with the instructions and rules governing the handling of hand baggage to and from the trains. On July 18, 1955, Circular No. 10 was reissued and provided in instruction No. 2:

"Red caps will when receiving baggage from passengers for handling either to or from trains SECURELY attach his check or checks to the piece of pieces of baggage presented **before moving** * * *." (Emphasis added.)

The concluding paragraph of this circular read Red Caps are forewarned:

“* * * that it will be sufficient cause for dismissal for any Red Cap handling baggage without checks placed on the baggage * * * as outlined in Paragraph 2 of this Circular.”

On November 9, 1957, the Claimant was observed moving baggage to the cab stand. This baggage—twelve pieces in all—was the property of three different passengers.

An inspection of this baggage by Assistant to General Manager Thrower, who had gone to the cab stand, was made in the presence of the cab starter, a Mr. Greenwell, and revealed that five of these twelve pieces of baggage were not tagged in accordance with the above instructions. The failure to tag these pieces of luggage was called to the attention of the Red Cap, Mr. Coleman Tucker, Jr. He immediately affixed three tags to the three pieces of luggage belonging to the first passenger, and shortly thereafter, in the presence of Mr. Thrower, he tagged the remaining two bags and delivered them to their owners.

Three days after his failure to tag these bags it was brought to the attention of the Carrier, and Claimant was notified of his dismissal from the service. On the following day, November 13, 1957, Claimant personally requested that an investigation be convened to reconsider his dismissal.

In compliance with this request and under provisions of Agreement under Rule 13, Claimant was notified that his requested investigation would be held and would consider his alleged failure to tag the five pieces of luggage in question. At the same time he was also informed of his right to select a representative of his choice and that he could produce any witnesses that he might desire.

During Mr. Tucker's appearance as a witness, he admitted that he had five pieces of untagged luggage on his cart on the day involved as reported by Mr. Thrower. His only explanation as to why there were no tags on this luggage was that the tag somehow fell off of one of the pieces of luggage, that the tags for two of the bags were mistakenly affixed to two other bags which had already been tagged, and that he did not have sufficient time to tag the remaining two bags because they had just then been placed on his cart by a passing Pullman porter.

So far as the first three bags are concerned, Messrs. Thrower and Greenwell, both testified that none of the other nine bags on Claimant's baggage had two tags on them, and that there was no evidence indicating a tag had fallen off one of these bags. With respect to the remaining two bags Messrs. Thrower and Greenwell, both testified that these bags were on Claimant's cart when he pulled up to the cab stand. They denied that these bags were placed on the cart at the cab stand by a Pullman Porter.

During the investigation the officer in charge agreed to recess the investigation so as to give the Claimant an opportunity to produce this Pullman porter but Mr. Tucker's representative replied:

“As far as we are concerned, we are ready to close the case.”

This was not the only instance during the course of the investigation that the Organization indicated it had no desire to produce witnesses. The record shows that the following testimony was given by Mr. Tucker.

“Q—Do you have present any witnesses, Mr. Tucker?

A—No.

Q—We understand that you don't desire to have any witnesses, is that correct?

A—No witnesses.

Q—Are you ready to proceed with the investigation?

A—Yes.”

This investigation resulted in a decision dated November 19, 1957, upholding Claimant's dismissal. This decision was appealed, and during the hearing held on this appeal the Organization requested that the contents of the following affidavit be made a part of the record of investigation:

“State of Texas

County of Dallas

“Before me, Myrtle Calhoun, a Notary Public in and for the said County, on this day personally appeared Jos. Redmond known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the following statement is true.

“On November 9, 1957, I arrived on the Santa Fe No. 116 Pullman Car DC3, I unloaded my car and a passenger left two pieces of baggage on the car DC3. I tried to catch the passenger with the two pieces of baggage and went to the waiting room and it so happened I saw Red Cap No. 22 who waited on my car in front of the station going to the Cab Stand. I met him there and asked him if he had delivered three pieces of baggage to a lady and a little girl and he said no. I asked him would he give these two pieces of baggage to them at the Cab Stand and he said put them on my truck. He already had several pieces of baggage on his truck and returned from the Cab Stand.

“Given under my hand and seal of office this 6th day December 1957.

“(Seal)

“/S/ Richard E. McCarting	/S/ Jos. Redmond
Witness	/S/ Myrtle Calhoun
/S/ F. D. Friend	Notary Public of
Witness	Dallas County”

This request was denied, as was the appeal, the following reasons being given.

“There can be no question about the fact that the charges against Mr. Tucker were conclusively proven in the investigation. His attempt to disprove the charges was most unconvincing, and the testimony of witnesses firmly established his guilt.

"The testimony given by Mr. Tucker about a Pullman porter bringing a bag or bags to the taxi stand was refuted by two witnesses. Furthermore, the hearing officer offered to recess the investigation to allow the accused or his representative to call in the Pullman porter for the purpose of testifying in behalf of Mr. Tucker. That offer was declined by Mr. Tucker's representative. Pullman porters have specific instructions to deliver any bags or articles left on cars to the Superintendent's Office.

"With respect to the statement produced by you at the conference on December 12th, signed by the Pullman porter alleged to have been involved in this baggage handling, we do not feel that such statement should be given any credence, since, as stated above, the investigating officer offered to recess the investigation long enough to have available the Pullman porter in question, and this would have given the Carrier the opportunity to question this witness. For these reasons, I cannot accept the statement in the light it was presented."

Your attention is directed to the following questions and answers at the close of the investigation:

"Mr. Sayers: Anything else anybody wants to say.

Mr. Akers: We have nothing else to say.

Mr. Sayers: Is there anything to be brought forward now before we close the investigation?

Mr. Akers: We have nothing further.

Mr. Sayers: Mr. Tucker and Mr. Akers, I would like to ask you then if each of you two gentlemen have been allowed to sit in the investigation room during the entire proceedings and allowed to question all the witnesses and examine all the papers used in the investigation?

Mr. Akers: We have, yes, sir."

The Organization states that the investigation was not as complete as it should have been:

"When a proffer was made (page 23, Transcript of Investigation) that the hearing be recessed to afford Tucker an opportunity to secure the testimony of the Pullman porter, Tucker expressed a willingness to have that done. However, and unfortunately, his representative overruled his request, and stated that he was ready to close the claim. It must be borne in mind at this point that Tucker desired a recess, but was overruled by his representative."

"* * * After the representative of the employe made the mistake of not securing the presence of the Pullman porter, that of itself was no excuse for the Carrier to refuse to inform itself, and especially after notice, of the truth or falsity of Tucker's statements by securing a statement from the Pullman porter. It signally failed in its duty to Tucker, and signally failed to seek out and see to it that justice would be done. * * *"

The above contention must be rejected because it is clear that when asked if

“Q—Do you have present any witnesses, Mr. Tucker?

A—No.

Q—We understand that you don't desire to have any witnesses, is that correct?

A—No witnesses.”

Then again when the offer was made to recess and to call in the Pullman porter as a witness it was Claimant's decision as well as his representative's. If it was not his decision he was in a position to take exception when his representative stated:

“As far as we are concerned, we are ready to close the case.”

It would be a presumption to say that the Carrier was obliged to contact the unnamed Pullman porter and examine him after the investigation was closed. Here the Carrier representative offered to recess the hearing to afford Tucker an opportunity to secure the testimony of the Pullman porter but his representative stated:

“As far as we are concerned, we are ready to close the case.”

In rejecting this proposal, it was the Claimant's representative, not the Carrier's, we think, who was arbitrary and unreasonable in refusing a continuance.

The record discloses sufficient competent evidence, which sustains the Carrier in their dismissal of said Coleman Tucker, Jr., for his failure to attach his check or checks to the pieces of baggage before moving same on the 9th day of November, 1957.

The Carrier did give the Claimant every opportunity to be heard and to present witnesses in his own behalf and offered to recess the hearing to a later date so that he might bring in the Pullman porter, but Claimant and his representative refused.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the Carrier and the Employees 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: A. Ivan Tummon
Executive Secretary**

Dated at Chicago, Illinois, this 11th day of June, 1959.