

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, 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 S. B. Baker, Richmond District, that The Pullman Company acted arbitrarily and capriciously in discharging Conductor Baker under date of July 22, 1958.

We now ask that Conductor Baker be restored to service with all rights including vacation rights, and pay for all lost time in accordance with the Memorandum of Understanding concerning Compensation for Wage Loss as shown on page 99 of the current Agreement. This Memorandum reads as follows:

"In the application of Rule 54 'Record Cleared of Charges' of the Agreement between The Pullman Company and its conductors, represented by the Order of Railway Conductors and Brakemen, effective September 21, 1957, it is understood by the parties that 'compensation for any wage loss suffered by him (the conductor)' means the wages which the conductor would have earned had he remained at work as a conductor without regard to any amounts he may have earned during the period he was not employed as conductor.

"Similarly, it is understood that if a Pullman conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the Agreement, effective September 21, 1957, and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month."

Rule 54 referred to above provides that an improperly disciplined conductor shall be compensated for any wage loss suffered by him.

OPINION OF BOARD: The claim of the Organization is on behalf of Conductor S. B. Baker, Richmond Division, The Pullman Company, who,

after hearing on a charge preferred against him, was discharged from the service of the Company.

The Organization asserts that in the suspension and discharge of Conductor Baker the Carrier acted arbitrarily and capriciously and asks that he be restored to service with all rights unimpaired and compensated for time lost.

The charge against Conductor Baker was that on April 20, 1958, while in the regular service of the Pullman Company on a trip from Richmond, Virginia to Detroit, Michigan and prior to arrival at Huntington, West Virginia, he drank intoxicants.

Mr. Baker admitted the truth of the charge. It appeared he had drunk intoxicants with a group of passengers on one of the Sleepers of which he was in charge. As a result of his imbibing Mr. Baker was noticeably affected and the odor of intoxicants was on his breath.

It was further developed that Conductor Baker's Service Record disclosed that two other infractions had been lodged against him that he "Conducted himself improperly toward woman passenger and had odor of intoxicants on his breath." Both charges resulted in warnings.

A provision in the Book of Instructions of The Pullman Company, of which Mr. Baker had knowledge, read:

"Any of the following derelictions will subject the employee to discipline or dismissal:

* * *

"Transporting, using or having possession of intoxicants or narcotics of any kind while in service or deadheading, or while on Company or railroad property.

* * *"

The Organization argues capably that the dismissal of Conductor Baker was excessive for three reasons which we discuss separately.

(1) "Since Claimant was not removed from his run, Carrier did not consider this to be a serious offense."

True, the Claimant was not removed from his run but the conclusion that it did not consider his conduct a serious offense is not warranted upon the record. In probability the Conductor was not taken from his run because no substitute was available where one was expected. In fairness to Mr. Baker it must be said that he was not heavily intoxicated nor unable to do his work. But he was not charged with intoxication nor inability to carry on the duties of his position but with the drinking of intoxicants while on duty.

(2) "In the past Carrier merely gave Claimant a warning for a similar offense."

This action operates both favorably and unfavorably to the Claimant depending upon viewpoint. Two similar offenses, possibly more serious than

the one here involved, had been brought to the attention of the Carrier. Repetition of like offenses with the serious results that might follow, no doubt, prompted the Carrier to act as it did. The prior warnings were ineffective to accomplish the results anticipated. The fact that the Carrier had been lenient as to the other infractions placed no obligation on it to do likewise on conviction of the instant charge.

(3) "Carrier did not dispense 'even handed justice' since it gave another Conductor a 30-day suspension for drinking intoxicants."

We may not review and compare the action of the Carrier on the charge here with that taken against another employe involving the same rule. The facts in that occurrence are not before us. They may have justified more severe punishment or, what is more probable, there may have been extenuating circumstances supporting the action taken. In the absence of a course of conduct tending to show bias or prejudice affecting Claimant the action of the Carrier in similar cases is of no effect whatever on the excessiveness of the order here on review. To apply the rule invoked by the Organization would necessitate the review and development of facts of many collateral matters and prolong the determination of claims interminably.

There is but one question presented here which must be resolved on well-defined principles:—Was the sentence of dismissal of Conductor Baker on the facts developed at his hearing arbitrary, capricious or an abuse of discretion by the Carrier.

The rule under consideration is not challenged. Nor could it properly be. It has been found by the Carrier to be necessary in the proper and efficient operation of its service and the fulfillment of its obligation to its patrons. The reasonableness of the punishment imposed for its violation may not be questioned by this Board unless it is not justified by the test heretofore stated. The awards of this and other Divisions of this Board are unanimous as to the test to be applied in the determination of the fairness of penalty imposed for violation of a rule which has been violated.

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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.