

**Award No. 9175**  
**Docket No. PM-8808**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Thomas C. Begley, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF SLEEPING CAR PORTERS**  
**(For and in Behalf of A. T. Gilmore)**

**THE PULLMAN COMPANY**

**STATEMENT OF CLAIM:** “\* \* \* for and in behalf of A. T. Gilmore, who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of the Chicago Eastern District.

Because, The Pullman Company did, under date of February 8, 1956, in a decision rendered by District Superintendent J. B. Kenner, take disciplinary action against Porter Gilmore by assessing on him a penalty of nine (9) days' suspension from service without pay.

And Further, because this penalty that was imposed upon Porter Gilmore was in violation of the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys in the service of The Pullman Company in the United States of America and Canada, represented by the Brotherhood of Sleeping Car Porters, Revised, Effective, January 1, 1953, because the charge made against Porter Gilmore was not proved beyond a reasonable doubt as provided for in the second paragraph of Rule 49 of said Agreement, which reads as follows:

‘Discipline shall be imposed only when the evidence produced proves beyond a reasonable doubt that the employe is guilty of the charges made against him.’

And Further, for the record of Porter Gilmore to be cleared of the charge in this case, and for Porter Gilmore to be reimbursed for the nine (9) days' pay lost as a result of this disciplinary action taken against him in violation of the above-mentioned Agreement.”

**OPINION OF BOARD:** Claimant was suspended from service without pay for nine days for having the odor of intoxicants on his breath while assigned to Car No. 104 on November 12, 1955. Conductor Hauser, at 8:00 P. M. asked Night Agent Brick to check on the claimant as he had observed the claimant stumble. Night Agent Bright and Day Night Agent Buffington went to Car No. 104 to check claimant, found him asleep, and when they

awakened him found he was unsteady on his feet, his eyes bloodshot and he had the odor of intoxicants on his breath. The statements of Bright and Buffington were read into the transcript of the hearing. Conductor Hauser gave two statements to the Carrier. In one he stated that he had seen the claimant stumble at about 8:00 P. M. and had asked Night Agent Bright to check the claimant. In the other statement he said that he talked to the claimant at 8:45 P. M. and "the claimant had no odor of alcohol on his breath, he spoke very clearly, and his walk was very normal".

The claimant denies that he had been drinking prior to reporting for duty at 7:00 P. M.

From a careful reading of the transcript and the submissions of the parties we find that there is a conflict in the statements as submitted by Night Agent Bright and Day Night Agent Buffington on the one hand, and by the statements of Conductor Hauser and the testimony and statement of the claimant on the other hand. However, it is not the function of this Board to resolve conflicts in testimony. The resolution of such conflicts is generally a matter for determination by the trier of the facts. There was evidence to establish the guilt of the claimant beyond a reasonable doubt. Therefore, Rule 49 of the Agreement was not violated by the Carrier. We find no basis upon which to disturb the Carrier's action herein.

**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 Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of the THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1960.