

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Frank J. Dugan, Referee

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**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. L. Pollitt, Detroit District, that The Pullman Company violated Rule 49, paragraph (c) of the Agreement between the parties when:

1. On June 10, 1958 Conductor Pollitt was withheld from actual service and employment on improper charges.
2. Because of this action we contend Conductor Pollitt was not accorded a fair and impartial hearing as required by the Agreement.
3. We now ask that Conductor Pollitt be credited and paid for all work he was entitled to receive between the dates of June 10th and July 28th inclusive; such credit and pay to be provided in accordance with the Memorandum of Understanding Concerning Compensation for Wage Loss.
4. We further ask that Conductor Pollitt's record be cleared of that part of discipline assessed between the dates of June 10th and July 28th, and that any reference to assault be expunged from his record.

**OPINION OF BOARD:** The question presented here is whether the Pullman Company violated Rule 49(c) of the Agreement in withholding claimant from service.

Rule 49(c) provides:

"If the complaint or written report alleges any of the following actions while on duty or on Company property, the conductor may be withheld from service pending the presiding officer's decision: intoxication, assault, misappropriation of Company funds or property, or property in the care of the Company, or offense against public morals."

On June 10, 1958 the Carrier sent the claimant a letter enclosing a memorandum of the Superintendent and statements of various witnesses. The letter confirmed the fact that claimant was being withheld from service as of June 10, 1958. On June 25, 1958 the Claimant was advised of a hearing on the charge that:

"You acted improperly toward Assistant Superintendent W. J. Toomey, created a disturbance in the District Office and used profane and obscene language."

A hearing was held on July 15, 1958 and on July 29, 1958, Claimant was suspended for 60 days. Claimant did not appeal from this ruling. Claimant has filed a claim alleging he was improperly withheld from the service under Rule 49(c) of the Agreement and it is that claim that is now before this Board. Rule 49(c) is clear and unambiguous. To withhold a conductor from service there must be an allegation of certain offenses, in this instance of assault. Neither the letter of June 10, 1958 nor the statements attached thereto contain "allegations" of assault. Likewise, the letter of June 25, 1958 does not contain an allegation of assault. Consequently, the Carrier violated Rule 49(c) in withholding Claimant from service. Claimant is entitled to pay from June 10, 1958 to July 28, 1958 such pay to be provided in accordance with the Memorandum of Understanding Concerning Compensation for Wage Loss.

As to part 4 of the claim since Claimant did not appeal from the decision suspending him, this part of the claim is not properly before us.

**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 the Agreement was violated.

#### AWARD

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1961.