

Award No. 10204

Docket No. PM-11106

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Walter L. Gray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: " * * * for and in behalf of E. D. Moten, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the District of Kansas City, Missouri.

Because The Pullman Company did, under date of November 13, 1958, through Superintendent J. E. Beavin, take disciplinary action against Porter Moten by suspending him from the service for three round trips in his regular assignment.

And further, because the disciplinary action taken against Porter Moten was based upon charges that were not proved beyond a reasonable doubt as provided for under the rules of the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys employed by The Pullman Company in the United States of America and Canada.

And further, because Porter Moten did not have a fair and impartial hearing.

And further, for the record of Porter Moten to be cleared of the charge in this case, and for him to be reimbursed for the time he lost as a result of the disciplinary action taken."

OPINION OF BOARD: This dispute arose as a result of a 45 day suspension having been assessed by The Pullman Company against Porter E. D. Moten.

Complaint was made by Mrs. David O. Brown of Evergreen, Colorado, that Porter Moten had been rude, insolent and impertinent on a trip from Oakland, California to Denver, Colorado.

We have examined the record at length and the letters of Mrs. Brown and a Mary Harmon of Oklahoma City, Oklahoma, which verified the complaint of Mrs. Brown.

After a hearing, Porter Moten was suspended from service for 3 round trips or a total of 45 days and the question is whether the punishment was too severe for the crime committed.

There is another part of the record that enters into the final disposition of this case and that is that Porter Moten has been charged with like conduct in the past. We feel that this has a most important bearing on this case.

Admittedly the punishment was too severe for the nature of the offense committed. We do not see any justification in penalizing a man 45 days pay in this case.

We have read Docket PM-10580 which involves the same Porter Moten and while it does not have any direct bearing on the instant case, the fact remains it shows more or less a pattern of conduct.

This Board has repeatedly held that it is the Carrier's function to weigh evidence in disciplinary cases and that the Board shall not substitute its judgment for the Carrier's unless the record clearly shows that the Carrier abused its discretion in its determination of guilt.

However, it is very evident that a punishment of 45 days suspension was too severe and it is the judgment of this Board that Porter Moten be paid for 2 round trips or 30 days but that he be denied relief as to 1 run or 15 days which shall be his punishment in this case.

Therefore, the claim is sustained as to 2 trips and denied as to 1 trip.

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 violated in part.

AWARD

Claim sustained in part and denied in part as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1961.