

Award No. 10375
Docket No. PM-10892

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
(For and in Behalf of Jeff Smith)

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of Jeff Smith, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of St. Louis, Missouri.

Because The Pullman Company did, under date of August 22, 1958, take disciplinary action against Porter Smith by giving him an actual suspension of one round trip in his regular assignment involving a loss of time of approximately seven and one-half days.

And further, because the charges against Porter Smith were not proved beyond a reasonable doubt as is provided for in 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, revised effective January 1, 1953.

And further, because the action taken against Porter Smith was unjust, unfair, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Smith to be cleared of the charges in this case, and for him to be paid for such time as he lost as a result of this unjust and unfair action.

OPINION OF BOARD: Claimant was charged that while in service he was under the influence of intoxicants. After hearing, the Company suspended the Claimant for 9½ days.

First, Claimant contends that he was not furnished with a full and exact copy of the original letter of complaint as required by Rule 49 of the Agreement.

The evidence indicates that the original letter of complaint was a handwritten letter by the Pullman Conductor to the Superintendent. This

was introduced into the record at the time of the hearing before the Superintendent. The copy originally furnished Claimant was a typewritten copy of the handwritten letter. For example, the words "smell", "odor" and "liquor" on the copy furnished the Claimant were spelled differently from the way in which they were spelled on the original handwritten complaint. We do not believe that the Claimant was deprived of any important facts necessary to his defense by the typewritten copy. Claimant does not contend that any of the differences were material or that he was, in any way, prejudiced in his defense. He was fully apprised of the charges against him. His effort to reverse on procedural grounds must fail.

Second, Claimant contends that the charges were not proven beyond a reasonable doubt. The Pullman Conductor's statement indicated that he observed the odor of liquor on Claimant's breath, that he was staggering and was not performing his work properly. A Flagman's statement said he observed the Claimant in a roomette in which he was sound asleep. Later, he observed that Claimant's speech was incoherent. The Trainmaster's statement indicated that the Claimant's walk was unsteady and his speech was not normal.

We have considered the varied defenses raised by the Claimant and his testimony at the hearing.

We are of the opinion that the evidence in the record is sufficient to support a finding by the Company that the Claimant was guilty of the charge against him beyond a reasonable doubt.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1962.