

Award No. 10642

Docket No. PM-10999

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
(For and in Behalf of J. B. Valentine)

THE PULLMAN COMPANY

STATEMENT OF CLAIM: “* * * for and in behalf of J. B. Valentine, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the St. Louis District.

Because The Pullman Company did, under date of October 16, 1958, through Superintendent W. H. Bradfield of the St. Louis District, take disciplinary action against Porter Valentine by assessing his record with a “Warning”.

And further, because the charge upon which the disciplinary action was based was not proved beyond a reasonable doubt as is required under the rules of the Agreement governing the class of employee of which Porter Valentine is a part, and said disciplinary action is therefore arbitrary, unjust, unreasonable, and in abuse of the Company's discretion.

And further, for the record of Porter Valentine to be cleared of the charge in the instant case and that the disciplinary action (a Warning) be expunged from his record.”

OPINION OF BOARD: This is a discipline case and the sole question involved, is as to whether or not one J. B. Valentine, individual claimant herein, on June 3, 1958, at approximately 4:50 P. M., was wearing a mustache.

Company contends that on said June 3, 1958, at approximately 4:50 P. M. Night Agent A. K. Harris, of the Company's forces, was in contact with Claimant Valentine, when the latter gave him his time sheet to turn in. Mr. Harris made the following report thereof, which is quoted in part as follows:

“When he was close to me I noticed he was wearing a mustache. I asked him when he was going to get rid of the mustache to which he replied that he did not have time that afternoon. He was clean shaven, except for the mustache. He was advised to remove it as soon as possible.”

On June 6, 1958, a copy of this report was mailed to Claimant by W. H. Bradfield, Superintendent of Company, with a request that he “kindly submit

statement promptly in this connection". Claimant made no reply and on June 19, 1958, Mr. Bradfield again wrote Claimant, again calling his attention to the copy of the report sent and again asking him to submit statement concerning the incident. No response was received from Claimant relative to this latter letter and on July 9, 1958, a letter was sent to Claimant by certified mail notifying him of a hearing to be accorded him on July 16, 1958, at 9:30 A. M. at Room 272 Union Station, St. Louis, Missouri, that while in service at his assignment in regular service on Line 3260, Car G. G. Vest, Loading #10 St. Louis, Missouri, to Dallas, trip leaving June 3, 1958, he violated a condition of his employment as follows:

"you were wearing a mustache in violation of a condition of your employment".

Following postponements of the hearing date, at request of Organization, hearing was had August 23, 1958 and on September 26, 1958 Decision was made on October 16, 1958, by Mr. W. H. Bradfield, the hearing officer, wherein he stated the evidence adduced substantiated the charge and that by reason thereof, Claimant was assessed with a "Warning". Appeal was taken to Carrier's Appeals Officer and in due course the claim was denied and thereafter the matter was processed to this Board.

It is the contention of the Claimant that the charge made against him "was not proved beyond a reasonable doubt under the rules of the Agreement governing the class of employe of which Porter Valentine is a part, and said disciplinary action is therefore arbitrary, unjust, unreasonable, and in abuse of the Company's discretion."

Company contends on the other hand that Claimant was afforded a fair and impartial hearing, that the decision made was amply proven and substantiated beyond a reasonable doubt and denies that its action was arbitrary, unjust, unreasonable or in abuse of the Company's discretion.

Rule 49 of the Agreement between the parties, provides in part as follows:

"RULE 49. Hearings. An employe shall not be disciplined, suspended or discharged without a fair and impartial hearing.

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."

The words "beyond a reasonable doubt" are words of common connotation as intelligible to laymen as to those learned in the law. (Award 6924 Rader) Rule 49 requires a careful analysis by the hearing officer of all the evidence submitted on the property. It means that, if after considering and weighing all the evidence, both that submitted by the Carrier in support of the charge made and that submitted in the defense of Claimant, there is a doubt of substantial nature or character remaining after such a consideration, then it is a doubt of which the benefit should be given to the individual whose conduct is being considered in a discipline case. (Award 10595, Hall)

However, we do not believe that the degree of proof required in Rule 49 changes the concept of our function with reference to our previous awards on the propositions that our duty here in a review of such cases confers any additional power on this Board in a consideration of like and similar cases.

We have said many times that it for this Board to determine, in these cases, whether there is any substantive evidence or testimony, if believed by the Company, from which the latter could have found in this particular case that the charge against the Claimant was sustained to the extent and in compliance with Rule 49: that the decision on the property should not be disturbed unless it is clearly shown that there has been an abuse of the right exercised, or, in any other words that Company has acted in an arbitrary, capricious or unfair manner in the conduct of the hearing or in the extent of disciplinary action taken.

The following instructions to Company's employees are pertinent to this inquiry:

"Instruction Manual"

"Page 1, paragraph 1:

"Car service employees are subject to instructions issued by all Officers of the Company and their representatives who act in a supervisory capacity. While on cars, on trains, in stations and yards, or on other railroad property, they also are subject to instructions of the train conductor and officials of the railroad companies."

"Page 3, last paragraph:

"An employe subjects himself to dismissal if his record shows frequent derelictions of duty, violations of regulations or unsatisfactory service in general."

"Page 7, second last paragraph:

"Personal appearances — An employe must be clean and neat in appearance, (no sideburns or mustache), shall wear clean linen and maintain proper body hygiene."

In addition to the foregoing, there was introduced in evidence a statement dated January 11, 1942, reading as follows:

"I hereby understand that being a uniformed employe of The Pullman Company it is a condition of my employment that I will not wear a mustache or sideburns at any time."

At the hearing there was received in evidence a report from Mr. A. K. Harris relative to Claimant while on duty, being observed wearing a mustache, the pertinent part thereof being quoted in the third paragraph of this opinion; this being submitted in proof of the charge made.

Claimant denied he was wearing a mustache at the time in question and submitted five letters from various porters stating "that claimant was not wearing a mustache at the time." One of them stated Claimant has "a little beard stubble on his face" and another stated "he did not appear to be freshly shaven, but in my opinion there was no more hair on his upper lip than there was on the other parts of his face where he shaves". It has been shown that the porter from whose statement the first of the foregoing quotes was made, was ascertained to have been out of service on the day in question, and his statement stands completely discredited, although it was considered by the hearing officer in this case.

Numerical superiority in the number of witnesses certainly raises a doubt, but not necessarily a reasonable doubt. We sit here as an appeal board. We cannot substitute our judgment for that of the Company. To the Company is reserved the right to pass on the credibility of the witness and the weight it will attach to testimony. It is for the Company to say whom it will believe and whom it will not believe. It is not within the province of the Board to weigh the testimony.

We hold that the charge upon which the disciplinary action was based was proved to the extent required by Rule 49 of the Agreement and that the action of the Company was not arbitrary, unjust, unreasonable nor an abuse of discretion.

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 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 15th day of June 1962.