Award No. 11009

Docket No. PM-12618

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: * * * for and in behalf of Ernest Porter, who is now, and for some time past has been, employed by the New York Central System, Dining and Sleeping Car Service Department, as a sleeping car porter operating out of the Chicago District.

Because the New York Central System did, through its Supervisor of Personnel, exact a penalty of Porter Ernest Porter as a result of charges having been placed against him, under date of November 23, 1960, which penalty was unusually harsh, severe, and excessive.

And further, the Organization maintains that the offense for which Mr. Porter was penalized did not justify such a harsh and extreme penalty.

And further, because Management on appeal refused to modify the penalty, and since the penalty is harsh, drastic, and too severe, the Organization maintains that said penalty should be removed from the service record of Mr. Porter, and he should be reimbursed for the wage loss he suffered from the result of this extreme and harsh penalty.

OPINION OF BOARD: In this discipline case there is little dispute as to the material facts and no contentions that the hearing was not conducted fairly and impartially. The petitioner was found guilty of sleeping while on duty and was suspended from duty on his regular assignment for four round trips, an actual suspension of 20 days. The Claimant, at the hearing admitted the charge, and the appeal taken to the Carrier's action in suspending the Claimant is solely on the grounds that the penalty was extreme, excessive and far too severe.

On the night in question, October 15, 1960, the Claimant was on duty attending two sleeping cars, his own and another where the porter assigned was on rest. The call bell between the two cars was not working. Nevertheless the Claimant seated himself in a roomette, with the lights out and a pillow at his head. When sleep came under such circumstances it cannot be said to be inadvertent.

In matters of discipline when the Division is called upon to examine the penalty assessed we have as a general rule said that we would not

disturb the penalty in the absence of a finding that under all the circumstances an impartial judgment could be formed that the penalty was unreasonable. Lacking such finding we have said in many awards that we would not substitute our judgment for that of the Carrier which has the primary duty of operating a public Carrier in the public interest. There are instances where we have modified the penalty imposed and we have again examined those awards. In each of those there were circumstances that justified the Division in alleviating the penalty, and after a careful examination of the facts in this docket we cannot say that they are parallel to any case where the Division has reduced or modified a penalty.

While the penalty may seem to us to be severe, the facts of record do not justify us in disturbing it.

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 Employes involved in this dispute are respectively Carrier and Employes 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 20th day of December 1962.