

Award No. 11015

Docket No. PM-12581

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: " * * * for and in behalf of W. G. Taylor, who is now, and for some years past has been, employed by the Pullman Company as a porter operating out of the District of Toronto, Canada.

"Because the Pullman Company did, under date of December 21, 1960, take disciplinary action against Porter Taylor by giving him an actual suspension of approximately nine (9) days, which disciplinary action was based upon charges which were not proved beyond a reasonable doubt as is provided for in the Agreement between the Pullman Company and Porters, Attendants, Maids and Bus Boys in the service of the Pullman Company in the United States of America and Canada, represented by the Brotherhood of Sleeping Car Porters; therefore, said penalty is arbitrary, unreasonable, capricious, and in abuse of the Company's discretion.

"And further, for the record of Mr. Taylor to be cleared of the charge in this case, and for him to be reimbursed for the nine (9) days pay lost as a result of this unjust and unreasonable action."

OPINION OF BOARD: Claimant, a Sleeping Car Porter, was suspended, without pay, for a period of about nine days. On November 14, 1960, Carrier wrote Claimant that while in service of his regular assignment: "You had the odor of intoxicants on your breath." Pursuant to this charge, a hearing was held on December 2, 1960.

The question before the Board is whether the charge against the Claimant was proven beyond a reasonable doubt.

In part, Rule 49 of the Agreement reads:

"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 Organization contends that the evidence does not prove the charge "beyond a reasonable doubt", while the Carrier contends that

the evidence is sufficient to sustain, "beyond a reasonable doubt," the charge that Claimant had odor of intoxication on his breath.

What constitutes "proof beyond reasonable doubt" has been discussed by this Board in numerous Awards. There is, however, no clear and precise definition. And this is for good reason. What constitutes "reasonable doubt" depends upon the circumstances of each case and primarily the evidence in the record. No one can, with definite precision, lay down a rule which will apply the principle of "reasonable doubt" equally to all disciplinary cases. It is sufficient to point out that under Rule 49 the degree of evidence required to sustain a charge of discipline is more than by "substantial evidence." Awards 7193 (Wyckoff), 7140 (Cluster), and 6924 (Rader).

The evidence supports the charge that Claimant had the odor of intoxicants on his breath. Inspector F. N. Coggin's statement said that he "got right up close to his face and could get faint odor of alcohol." Agent-Foreman C. H. Armstrong's statement said that he "could detect a slight odor of some kind of liquor from his breath." Conductor, E. K. Hall, in his statement, said that: "While lifting tickets leaving Chicago noticed a smell of alcohol on this porter's breath."

Claimant denied that he drank "any intoxicating beverages during the entire trip." The statement of Porter, S. S. Lamb, that the Claimant "was not drinking" does not categorically state whether Claimant "had the odor of intoxicants on his breath." Another porter, J. G. Llaguno stated that he had no close contact with Claimant except when he called Claimant at 4:30 A. M. to take his turn to watch. Nothing is contained in Mr. Llaguno's statement affirmatively or negatively referring to intoxicating odor on Claimant's breath. The Bus Boy, Paul R. Rutz stated he did not talk to Claimant during the entire trip. "In fact," he stated, "I don't think I saw him at all that night."

Carrier's book of **Instructions to Porters, Attendants and Bus Boys**, a copy of which Claimant had in his possession, reads, in part as follows:

"Any of the following derelictions will subject the employe to discipline or dismissal.

Transporting, using, or having possession of intoxicants or narcotics of any kind while in service or deadheading, or while on Company or railroad property. An employe reporting for duty, whether the assignment is to service with passengers or for a deadhead movement on car or on pass, with the odor of intoxicants on his breath or under the influence of intoxicants or narcotics will be considered in violation of this regulation."

There is no reasonable doubt that the Claimant had an odor of intoxicants on his breath. The evidence is more than "substantial" to support the charge. Carrier has proved the charge "beyond a reasonable doubt" as required in Rule 49.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of December 1962.