

Award No. 11017

Docket No. PM-12586

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 G. Mayfield, who is now, and for a number of years past has been, employed by the Pullman Company as a porter operating out of Kansas City, Missouri.

"Because the Pullman Company did, under date of December 27, 1961, take disciplinary action against Porter Mayfield by giving him an actual suspension from the service for a period of thirty (30) days, which disciplinary action was based upon charges which were not proved beyond a reasonable doubt as is provided for in the Agreement covering the class of employees of which Mr. Mayfield is a part; therefore, said penalty was arbitrary, unreasonable, capricious, and in abuse of the Company's discretion.

"And further, for the record of Porter Mayfield to be cleared of the charge in this case and for him to be reimbursed for the thirty (30) days pay lost as a result of this unjust and unreasonable action."

OPINION OF BOARD: Claimant was suspended, after investigation, for a period of thirty days on a charge that read:

"You engaged in an angry dispute with the dining car steward and directed threatening and obscene remarks to him."

On August 4, 1960, the Dining Car Steward notified the Pullman porters that they would be accommodated for meal service if they so desired. Claimant and other porters were served and charged \$1.50 each. Some of the porters, including Claimant, asked for a meal check. The Steward told them that he did not have any, but that he would give a written receipt to anyone who asked for it. Claimant did not want a receipt and continued to ask for a meal ticket. The Steward told the Claimant that Supervisor, C. E. Stone, who was on the train, had instructed him "to use one Military meal check for all porters per meal."

Claimant not only refused to pay his check, but he also said that the chef had served "all the garbage that he had in the kitchen" and that "the food was not fit for humans." When the Steward walked toward the

other end of the diner, Claimant followed him and used vile and abusive language in addressing the Steward. He also called the Steward a "thief" and otherwise made threatening gestures.

The report and statements of the Dining Car Steward were corroborated by the Dining Car Supervisor and by the Pullman Inspector.

The Dining Car Supervisor asked the Inspector to "assist in getting the three porters to pay for their meals." Claimant was one of the three porters referred to. All paid their bills but Claimant continued to demand a meal check.

The Inspector heard Claimant call the Steward a "thief". Both the Inspector and the Dining Car Supervisor stepped in between the Claimant and the Steward "to prevent physical encounter which appeared imminent." The Inspector's statement in the record is supported by Dining Car Supervisor, C. E. Stone. Stone also heard Claimant call the Steward a "thief" and confirms that he and the Inspector "rushed in and stopped what looked like a fight."

Claimant stated that he did not consider the incident an altercation until the Dining Car Steward used abusive language at him. He denied that he used any abusive language. Claimant's statement and oral evidence contain some contradictions and is, in some respects, evasive.

The statements of the other two porters involved, Moten and Cruse, deny that Claimant used vile language or that a physical encounter was imminent. It is interesting to note that the statements of Moten and Cruse are each dated August 22, 1960, and that they are identical word for word. One person unquestionably prepared both statements. The statements of the Dining Car Steward, the Inspector and the Dining Car Supervisor are each distinct and they bear personal recollections of the incident.

It is difficult to assess testimony of witnesses in their absence and it is more difficult to assess evidence on written statements. However, this Board has repeatedly held that unless it is shown that the Carrier was arbitrary, vindictive or acting in bad faith, that the discipline will not be set aside. The Dining Car Steward, the Inspector and the Dining Car Supervisor did not maliciously and wickedly contrive a false situation to penalize the Claimant. Awards 1831 (Carter) and 1987 (Shaw). Furthermore, this Board, under these circumstances, cannot substitute its judgment for that of the Carrier. 10642 (LaBelle), 10595 (Hall) and 10596 (Hall).

The charge is sustained beyond a reasonable doubt as provided in Rule 49. In assessing the penalty, Carrier had the right to consult Claimant's work record and a prior violation for a similar offense which was heard by this Board and denied in Award 10596 (Hall).

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 Carrier did not violate the Agreement.

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.