

Award No. 11237

Docket No. PC-12614

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,
PULLMAN SYSTEM**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor W. F. Busch, Jr., Jacksonville, Fla. District, that:

1. The Pullman Company acted arbitrarily and capriciously and not in accordance with Rule 49 of the Agreement when it suspended Conductor Busch from service beginning January 9 until January 16, 1961, or for 7 days.

2. We now ask that Conductor Busch be credited and paid under the Memorandum of Understanding Regarding Compensation for Wage Loss for all time lost, and that his record be cleared of the charge.

OPINION OF BOARD: This is a discipline case. The Claimant was charged with failure to respond promptly to a complaint from a passenger that someone else was occupying a roomette for which he had paid his fare. This complaint was submitted to the Carrier in the form of a letter, after a determination of the evidence presented the Carrier suspended the Claimant for seven (7) days.

The Claimant contends that the charge has not been proved beyond a reasonable doubt, also, that in this respect, a complete failure to identify the Claimant or the person mentioned in the complainant's letter.

We think the matter of identity is material in this case.

For if there is no identity of the Claimant as the errant employe then he should be reimbursed for loss of time.

It is apparent that the patron of the Carrier did not know his name, for if he did, it would have been inserted in his letter of complaint.

However, it is inferred by both parties that both the Pullman Conductor and the Train Conductor lift the fares together, thus from the nature of the

complaint it is difficult to say that the complainant was unable to distinguish which of the two conductors failed to act promptly. His letter emphasizes that his difficulty was with the Pullman Conductor, his letter makes two references to a person occupying that position.

We further hold that the objection to the nature of evidence presented is without merit. Both parties were utilizing information from statements submitted that was favorable to them.

The Rule possesses no restriction to the type of evidence that must be presented, except both parties are afforded the right to cross-examine witnesses if they are present.

The Carrier's action was just.

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 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 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 March 1963.