

Award No. 12662
Docket No. PM-14447

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of R. Campbell, who is presently employed by The Pullman Company as a porter operating out of St. Louis, Missouri.

Because The Pullman Company did finally, through Mr. R. J. Wurlitzer, Assistant to Vice President, Operating, sustain the disciplinary action that was taken against Mr. Campbell by Superintendent M. Gieseke under date of July 1, 1963, in which Mr. Campbell was given an actual suspension of ten (10) days from his job without pay.

And further, because the decision was predicated upon charges which were not proved beyond a reasonable doubt as is provided for in the Agreement between The Pullman Company and its porters, maids, attendants and bus boys which was then and is presently now in effect.

And further, for the record of Mr. Campbell to be cleared of the charges in this case, and for him to be reimbursed for the ten (10) days' pay he lost as a result of this unjust and arbitrary action.

OPINION OF BOARD: After a hearing, Porter R. Campbell was given a suspension of 10 days from his job without pay. He was found guilty of the charge that he was argumentative and insolent to the Railroad Passenger Agent, J. L. Davis, when that representative requested him to move a woman passenger's luggage from her coach to her new accommodations in Pullman Car No. 94.

The Petitioner claims that the charge made against Porter Campbell was not proved beyond reasonable doubt as required under Rule 49; that the Porter's own testimony was disregarded whereas that of the Passenger Agent was relied upon; that the woman passenger never filed a complaint nor was called upon as a witness. The Brotherhood argues that the incident grew out of a misunderstanding concerning instructions and that once Porter Campbell understood the situation, he fully complied with the directions.

Carrier maintains that the record amply provides corroborative evidence to support its finding of guilty beyond a reasonable doubt. It sets forth the

Porter's own statement that he was not a red cap to prove that he was argumentative and insolent in his refusal to follow the Passenger Agent's instructions.

In our perusal of the record, we find basis to question whether the charge that the Porter was argumentative and insolent to the Passenger Agent was proved beyond a reasonable doubt. Great emphasis has been placed upon the following statement of the Passenger Agent concerning Mr. Campbell's response to his instructions: "He (Mr. Campbell) stated that he wasn't any red cap and that he was not going up any two or three cars to get luggage; he was working Car No. 94 only." By itself this reply to the instructions of the railroad representative could be considered argumentative and insolent; however, the tone, meaning, and significance of this statement must be measured in connection with the situation out of which it arose. The Porter was occupied with receiving passengers at the time he was approached by the Passenger Agent. He did not immediately understand that he was requested only to get the luggage for a woman who had purchased lower berth No. 10 in his pullman car. He makes this misunderstanding clear in his statement, "The way he (Passenger Agent) spoke, I thought he was someone under the impression that I was to assist all day coach passengers." In this light his statement that he was not a red cap seems explanatory rather than argumentative.

We note that the woman passenger who was present at the incident did not testify nor was any statement from her included in the hearing. The Passenger Agent indicated that she was upset and cried as a result of the occurrence, but there is no charge lodged against Mr. Campbell for rudeness and insolence to her. Moreover, facts such as exhaustion from lack of sleep as a result of traveling by coach from Florida to Kansas City and the additional exertion used in making the transfer may have contributed to her emotional upset.

There is some conflict in the testimony as to whether Mr. Davis was readily identifiable to the Porter as a Passenger Agent; however, when the Porter recognized Mr. Davis as a railroad representative and comprehended that his directions were to assist in transferring the baggage of a woman passenger who purchased a berth in his car, he promptly went to the coach and obtained her luggage as directed.

In our opinion the incident was a misunderstanding rather than a deliberate refusal accompanied by argumentation and insolence. The record lacks corroborative evidence to sustain a finding that Mr. Campbell was proved guilty of the charges beyond a reasonable doubt. Since there remains a reasonable doubt, he is entitled to the benefit of that doubt. Accordingly, we direct that he be cleared of the charges and that he be reimbursed for the 10 days' pay that he lost.

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

The Agreement of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1964.