

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Referee, Wm. H. Spencer

PARTIES TO DISPUTE:

**ORDER OF SLEEPING CAR CONDUCTORS
THE PULLMAN COMPANY**

DISPUTE.—"The above-named conductor (E. A. Moses) asks reinstatement to service as Pullman Conductor without loss of seniority rights and with pay for all wages lost during the time out of service, beginning October 16, 1934, the date of his discharge on which question an award is asked."

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of a hearing thereon.

As a result of a deadlock, William H. Spencer was called in as Referee to sit with this Division as a member thereof.

On October 16, 1934, the carrier dismissed Conductor E. A. Moses, petitioner in the present dispute, for "unsatisfactory service." In its ex parte submission of facts, the carrier states that "the culminating failure which led to Mr. Moses' discharge was his treatment of Rev. Toth, the circumstances surrounding which are hereinafter described."

Before submitting his claim to the Third Division of this Board, Conductor Moses was accorded hearings by the District Superintendent at Los Angeles, the Zone Superintendent at San Francisco, and the Assistant to the General Manager in Chicago, in compliance with Rule 10 (a) and (b) of the Agreement between the Order of Sleeping Car Conductors and the Pullman Company and in compliance with Section 3 (i) of the Railway Labor Act as approved June 21, 1934.

POSITION OF THE EMPLOYEES.—On behalf of the petitioner, it was contended that his dismissal was unjustified because "no proof has been submitted of the charges made against him."

POSITION OF THE CARRIER.—On behalf of the carrier, it was contended that just cause existed for the dismissal of the employee. In support of this position, the carrier submitted extracts from Conductor Moses' service record.

OPINION OF THE REFEREE.—Although this Board has the power to order the reinstatement of an employee, it should be very cautious in the exercise of the power. It should not exercise it unless the evidence clearly indicates that the employer has acted arbitrarily, without just cause, or in bad faith.

At the time of his dismissal, Conductor Moses had been in the employ of the carrier for 24 years and 4 months. All but seven months of this time, the employee served the carrier in the Los Angeles District. His service record shows that during his period of service he was given 53 satisfactory service inspection reports, and charged with 34 failures in the proper performance of duty and 17 instances of "discourtesies to and improper conduct toward railroad officials and passengers." These various instances of dereliction of duty on the part of the petitioner, naturally enough, vary in seriousness. To the Referee, many appear very serious; others appear trivial. The explanations, which appear of record, made by the petitioner in answer to these charges throw a different light on many of them. During his service with the company, the employer received two letters from passengers in commendation of the services of Conductor Moses. As late as July 17, 1934, the Supervisor of Industrial Relations of the carrier made the remark that the petitioner was "a pretty good old time Conductor, who knows how to perform his work."

Viewing the record as a whole, however, the Referee is of the opinion that the carrier has adduced sufficient proof of the charges made against the petitioner, justifying dismissal on the grounds of "unsatisfactory service."

AWARD

The claim is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 2nd day of January 1936.