

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF SLEEPING CAR CONDUCTORS
THE PULLMAN COMPANY

STATEMENT OF CLAIM.—

"Request of Conductor H. G. Immenga, Chicago Southern District, for reinstatement to service as conductor with pay for all time lost."

STATEMENT OF FACTS.—In its ex parte submission of this request the Order of Sleeping Car Conductors merely declared that Conductor Immenga was discharged on October 17, 1935, for alleged unsatisfactory service, and that hearings had been held as required by Rule 10 of the Agreement between the parties in cases of discipline. In addition, it submitted, as Exhibit D, "the service record of the conductor, with his answers thereto."

In its submission the Pullman Company made the following statement of facts:

"Mr. H. G. Immenga was employed by The Pullman Company in capacity of conductor on July 14, 1920, and was discharged from its service on October 17, 1935, for unsatisfactory service. During the period of his employment the Company has received 8 letters from passengers commending his service, and his record is credited with 39 satisfactory service inspection reports. In contrast with this, his record is charged with numerous failures in the proper performance of his duties as a conductor, including many clerical accounting errors, failure to make proper accounting for the use of accommodations in cars under his charge, failure to issue cash fare checks in accordance with the regulations, discourtesies to and altercations with passengers, gross neglect of duty, carelessness in handling his work and gross inattention to duty as described more fully in transcript of this conductor's record designated as Exhibit 'A,' and in other exhibits, attached hereto.

"The particular incidents which, considered in connection with his past record, brought about the discharge of conductor Immenga are as herein-after described.

"Report was received from a passenger occupying accommodations in sleeping car Lake Ferguson, line #524, en route Jacksonville, Florida, to Chicago, on The Seminole Limited train which left Jacksonville at 8:40 p. m. August 27th and arrived at Chicago 7:15 a. m. August 29, 1935, to the effect that conductor Immenga arose at 6:40 a. m. August 28th from upper berth #8 of this car and immediately entered room 'C,' where he remained until 7:30 a. m. During the period train stood in station at Columbus, Georgia—5:45 a. m. to 6:40 a. m.—the porter was not in the car nor was he on the station platform. Several passengers in upper berths rang the bell many times during this period, but received no attention. Conductor proceeded to the dining car at 7:45 a. m. and was seen sitting in the diner smoking cigarettes and visiting with the steward from that time until 9:00 a. m. He then returned to room 'C' of car Lake Ferguson, in which he remained until 10:00 a. m. when he emerged and made a trip through the train and again re-entered room 'C,' closing the door and remained in the room until shortly before arrival at Birmingham at 11:20 a. m. Upon returning from the diner at 1:00 p. m. the conductor entered Drawing

Room 'A,' the door of which he closed, and he remained in the drawing room until 5:00 p. m. During the greater part of this period the porter of car Lake Ferguson also was stretched out on the seats of room 'C' dozing. Several passengers rang the bell for attention during this period. The porters of cars on the train were out on the station platform for reception of passengers at Corinth, Miss., at 4:47 p. m. but the conductor did not make an appearance. He came out of the drawing room at 5:00 p. m. after the porter had knocked several times on the door.

"In explanation conductor Immenga stated he did not arise at the regular time because he was ill during part of the night. He admitted spending some time in Compartment 'C' and said he laid down for some time in the drawing room. Copies of conductor's two statements of October 12, 1935, are enclosed, designated as Exhibits 'Z' and 'ZZ'. Meal ticket #A4540 (See Exhibit 'T') issued to conductor Immenga in the dining car of this train for breakfast service, when he claimed to be ill, on the morning of August 28th, which bears the conductor's signature, called for cantaloupe, puffed rice, ham and eggs, toast and coffee. Conductor admitted he had made no report of his illness to anyone on the train, nor to platform representatives at Birmingham, or upon arrival at Chicago, the end of the run.

"The revenue reports for trip of sleeping car 'Meconah' (#59) in line #523, which left Savannah, Ga., at 9:00 p. m. September 8, 1935, via Central of Georgia Railway, and arrived in Chicago at 7:30 a. m., September 10, 1935, via Seminole Limited train of the Illinois Central Railroad, said car being in charge of conductor H. G. Immenga between Columbus, Ga., and Chicago, did not account for the occupancy of lower berth #10 between Cairo Junction and Chicago, Illinois. Photostatic copy of the service diagram (revenue report) of car 'Meconah' on trip in question, which bears no entry of occupancy of lower berth #10, is attached hereto and designated as Exhibit 'B.'

"The passengers' destination and breakfast call card, prepared by conductor Immenga for this car and trip last above shown, bears entry in his own handwriting of lower berth #10 from Cairo to Chicago, passenger to be called at 6:15 a. m. For confirmation see photostatic copy of passengers' destination and breakfast call card for car 'Meconah' (#59) trip in question, attached hereto as Exhibit 'C.'

"The ticket office diagram, prepared at Cairo, Illinois, for sale of space in car #59, train #10, September 9, 1935, which car was in charge of conductor Immenga between Cairo Junction and Chicago, Illinois, and bearing office stamp of the Cairo ticket agent of the Illinois Central Railroad of that date, shows lower berth #10 reserved in the name of 'Crohn,' and entry of ticket No. 935 sold for the berth. Photostatic copy of said office diagram is attached hereto as Exhibit 'D.'

"The conductors' working diagram for space occupied in car 'Meconah' (#59) trip in question, showed occupancy of lower berth #10 by a passenger destined to Chicago, as indicated by Photostatic copy of said conductors' working diagram attached hereto and designated as Exhibit 'E.'

"Investigation located the passenger who occupied the berth, who, when interviewed, stated positively that the railroad and Pullman transportation for the berth were surrendered to the Pullman conductor after getting aboard the car. The report of the railroad train conductor showed occupancy of lower berth #10 in car 'Meconah,' date in question, by a passenger destined to Chicago, and the records of the railroad company showed receipt of railroad ticket surrendered by the passenger. Photostatic copy of Central of Georgia Railway train conductor's ticket envelope #30043 for car 'Meconah' trip in question (upon which entries were made by succeeding train conductors of the Illinois Central Railroad after car left rails of the Central of Georgia Railway), showing occupancy of lower berth #10 to Chicago by one passenger, is attached hereto and designated as Exhibit 'F.'

"Conductor Immenga presented two written statements in an effort to explain his failure to make accounting for occupancy of the berth, in which he admitted he had made the entries on call card and working diagram, but had failed to account for revenue for occupancy of the berth. He stated he did not know whether lower berth #10 was occupied or not, or whether it was a ticket or cash transaction, and was unable to explain why he had not made proper accounting. Photostatic copies of those two

statements presented by conductor Immenga in his own handwriting, dated October 12, 1935, acknowledging his lack of knowledge or recollection of the occupancy of lower berth #10, on trip in question, are attached hereto and designated as Exhibits 'G' and 'H.'

"The report concerning trip of September 8-10, 1935; the report of January 7, 1935, details of which are recorded under incident of that date on Exhibits 'A,' 'Q,' 'R,' 'S,' 'T,' 'U,' 'V,' 'W,' 'X,' and 'Y,' covering failure of the conductor to account for the occupancy of three lower berths between Cairo Junction and Chicago; the report of August 28, 1935, covering conductor's gross inattention to duty, and numerous other reports reflecting upon his ability satisfactorily to perform the duties of Pullman conductor, were reviewed with conductor Immenga by his direct superintendent and by the Assistant to General Manager, but as the conductor could not satisfactorily explain his failure to comply with the Company's regulations decision was reached that he was not capable of performing the duties of his position and he was discharged on October 17, 1935, for unsatisfactory service.

"Mr. Immenga was accorded hearings on his petition by the District Superintendent, Chicago Southern District; by the Superintendent of Central Zone at Chicago, and by the Assistant to General Manager in Chicago; all of whom have denied his plea."

POSITION OF EMPLOYEES.—In support of their request for reinstatement, with pay for all time lost, the employees declared:

"It does not necessarily follow that a conductor has a bad record because there are numerous reports on his service card. Some may not show any dereliction of duty and others may be disproved. Where the conductor denies he is guilty and the evidence is not conclusive, he should be given the benefit of the doubt. This conductor's record is made to look especially bad by the inclusion of trivial reports and incidents that have not been verified."

POSITION OF CARRIER.—In support of the propriety of the dismissal the carrier analyzed the evidence contained in the various exhibits of record, and summarized its position as follows:

"Review of Mr. Immenga's record while employed in capacity of Pullman conductor, as outlined in the enclosed transcript, designated as Exhibit 'A,' and in other exhibits attached hereto, clearly shows his failure to meet the requirements of his position on innumerable occasions, that he was instructed and reinstructed time and again without accomplishing the desired result: viz, to prevail upon him to perform his duties properly, intelligently, and in accordance with the Company's regulations.

* * * *

"The following is contained in the Book of Instructions to Conductors, copy of which was furnished Mr. Immenga:

"*Discipline.*—The Company requires of employes the best service possible under all conditions. A system of discipline by record is in force, whereby suspension from duty with loss of pay is avoided. Employees charged with any dereliction of duty or breach of rules will have full opportunity to be heard in their own defense, and if found guilty will be cautioned, warned against repetition of the offense, or disciplined by reprimand or book suspension. Individual record is kept of each employe and every case of negligence or improper conduct with penalties assessed will be entered thereon, and the employe notified of the action taken.

"When an employe's record shows frequent derelictions of duty or violations of rules, the question of his retention in the service will have special consideration, and dismissal may follow because of unsatisfactory service in general. Disloyalty, dishonesty, intemperance, immorality, insubordination, incompetency, discourtesy to passengers, gross carelessness, false reports, or concealing facts concerning investigations, etc., will subject the offender to dismissal."

"It will be noted from examination of Exhibit 'A' and other exhibits, this conductor's service record was reviewed with him by his District Superintendent on numerous occasions and he was warned that he must improve his service and demonstrate his ability to handle the duties of his position if he expected to retain it. He failed completely to heed these

admonitions. We feel that Mr. Immenga has been treated very leniently in the light of his many transgressions, that he has been given many more chances of continued employment than his record merited, and that he has demonstrated without question he is incapable of satisfactorily performing the duties of a Pullman conductor. We firmly believe his discharge was entirely warranted and that there is no justifiable reason for granting his petition for reinstatement."

OPINION OF BOARD.—It has been held repeatedly by this Board that where the carrier has not acted arbitrarily, without just cause, or in bad faith, the judgment of the Board as to the propriety of dismissals will not be substituted for that of the carrier. In this case there may be differences of opinion as to the importance and significance of particular items on the service record of the petitioner, but there can be no doubt that there is ample evidence of record of convincing character to support the charge of "unsatisfactory service" upon which the dismissal was based. It is questionable whether the Board could, with any show of reason, reach a conclusion different from that of the management, even if it were itself to exercise the discretion in this sphere which is vested in the management; but there certainly is no ground for concluding that the management was without reasonable basis for its disciplinary action.

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 employe involved in this dispute are respectively carrier and employe 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 evidence of record discloses no adequate grounds for disturbing the disciplinary action of the management.

AWARD

Request denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 12th day of February, 1937.