

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "The particular question herein involved is the unjust and wrongful discharge of Harvey Graves from his position as a sleeping car porter in the Los Angeles, California, District, by the Pullman Company."

STATEMENT OF FACTS: The petitioner, who had been employed as a sleeping car porter, operated out of the district of Los Angeles, from May, 1928, until September 8, 1936—furloughed a part of the time—on which date he was discharged by the district superintendent under whom he was employed. Petitioner was informed by the superintendent that the reason of his discharge was a complaint of passenger that he had been grossly insulted by Graves. Thereupon, Graves advised the superintendent that he would be represented by the Brotherhood, and a request for hearing was made by the Brotherhood. This hearing was held October 5, 1936, at which time the superintendent went into the details surrounding the complaint, and at the end of the hearing the superintendent agreed to restore Graves to service without loss of seniority but without pay for the time lost. Graves returned to work and worked twenty-two days, when he was again called into the superintendent's office and discharged a second time. The Brotherhood requested another hearing and were informed by the superintendent that he had been instructed to discharge Graves again upon orders of the Chicago office, because it disapproved the superintendent's previous action in returning him to the service. Thereupon, the Brotherhood took an appeal to the zone superintendent at San Francisco, who sustained the discharge. The Brotherhood then prosecuted a further appeal to the assistant to the vice president, the highest executive officer dealing with such matters, and he sustained the dismissal, but upon the basis that Graves was "temperamentally unfit to perform the duties of a porter."

There is no difference between the parties concerning the foregoing facts. There is considerable difference, however, concerning other phases of the matter, not however regarded as vital to a determination of the issues. No minutes were kept of any of the hearings, and the Brotherhood was refused permission to have a stenographer present. One such circumstance is that it is claimed by the Brotherhood that when the division superintendent restored Graves to duty, following the first discharge, that he did so on probation. The management, on the other hand, claims that the division superintendent stated he was restoring him subject to approval of higher authorities. This claim, however, was only put forward on the management's side after the matter had been brought to this Board; previous to that time the position of the management had been that the district superintendent was without authority.

At the first hearing Graves' record was produced by the superintendent at the request of the Brotherhood and was in no wise treated or considered as a part of the charge upon which he was being investigated. Later, however, in the course of the appeal, the record appears to have become the dominant phase of the matter and not only was the service record considered but other matters, happening outside of the service but reflecting quite adversely on Graves, were also brought in and given consideration, and it is quite apparent from the decision of the assistant to the vice president that it was based rather on his record as a whole than on the particular instance. There seems to be no doubt concerning the fact that Graves was guilty of the particular offense for which initially he was discharged.

The claim for lost pay was not presented within the rule but only at a later stage of the proceedings and is not cognizable.

OPINION OF THE BOARD: The employes contend that Graves was not accorded "a fair and impartial hearing," and is being punished twice for the same offense. There is no doubt but that the procedure is open to serious criticism. A fundamental incident of a fair and impartial hearing is that an accused shall be advised definitely as to what he is charged with. Here in the initial proceedings it is quite obvious that Graves was merely charged with the particular offense occurring a few days previous to his discharge. The general charge of temperamental unfitness did not arise until the last stage of the appeal and was never mentioned in the hearing. The result is that he was tried, convicted, and punished for one offense and upon appeal his conviction sustained on an entirely different offense. This Board cannot sustain such procedure. It is loath to do a vain thing but has no alternative other than to order the petitioner restored to service, notwithstanding the carrier would be entirely within its rights in immediately preferring the general charge of incompetence against him and trying him upon his present record, which would abundantly sustain such charge.

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 porter Graves was not accorded a fair and impartial trial.

AWARD

Petitioner shall be reinstated without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of January, 1938.