

Award No. 800

Docket No. PM-848

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "For and in behalf of George Brewer, a porter now employed by The Pullman Company operating out of the Pennsylvania Terminal, New York City, because The Pullman Company did penalize Porter Brewer unjustly by assessing his record with twelve and one-half (12½) days actual suspension on the alleged charge of having the odor of liquor on his breath, and for the record of Porter Brewer to be cleared of this particular charge, and for Porter Brewer to be paid for all time lost by reason of this unjust and unreasonable disciplinary action."

EMPLOYEES' STATEMENT OF FACTS: "Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is the duly designated and authorized representative of all porters, attendants and maids in the employ of The Pullman Company under the provisions of the Railway Labor Act.

"Your petitioner further represents that in such capacity it is the duly authorized representative of George Brewer who is now employed as a porter by The Pullman Company operating out of the Pennsylvania Terminal District of New York City.

"Your petitioner further represents that Porter Brewer has been employed by The Pullman Company from the month of June, 1910 up until the present time, something over twenty-eight years.

"Your petitioner further sets forth that on the date of June 8, 1938, Porter Brewer was assigned for his regular run on car Villa Rica, train No. 611, line 1686 from New York to Buffalo over the Lehigh Valley Railroad.

"Your petitioner further represents that Porter Brewer reported for this run at 6:50 P. M. on the above mentioned date, and that he was having some trouble with his stomach and after arriving at the station had to leave his car several times to go to the toilet; and that approximately 8:45 P. M., on the above mentioned date, Night Platform Agent Donnelly came in to inspect the car to which Porter Brewer was assigned, and that Inspector Donnelly asked Porter Brewer if everything was all right, to which Porter Brewer replied that it was. About that time, Inspector Donnelly said something to Porter Brewer about his eyes and later came back and removed Porter Brewer from the car claiming that he was drunk.

"Your petitioner further represents that on July 29, 1938, Porter Brewer was notified by Superintendent E. P. Schwotzer of the Pennsylvania Terminal District that he had been removed from the above mentioned car and line on June 8, 1938, 'On account of having the odor of liquor on your breath, etc.', and that under date of August 5, 1938 Porter Brewer was notified by Superintendent Schwotzer in what he (Schwotzer) termed an amended notice involving the same charge.

drinking on the job, which puts the passengers' lives and the lives of his fellow workers in greater danger.'

"As is clearly shown from his record, Brewer has repeatedly been penalized for his derelictions involving liquor. He was fully aware that he would be disciplined for drinking while on duty. He failed to heed past admonitions and penalties. The suspension of 12½ days for the use of intoxicants on June 8th is entirely justified.

"This Division on numerous occasions in its Awards has repeatedly stated that the control by the employer over the employe should not be interfered with in the absence of clear abuse of discretion. There has been no abuse of discretion in the action taken in the case of Porter Brewer. The weight of evidence clearly sustains the charges made against him and his claim should therefore be denied."

OPINION OF BOARD: Porter Brewer was removed from his car at initial terminal, night of June 8, 1938, by Night Agent on account of not being in condition for service and told to report to District Superintendent before again going out.

Failing to report as directed, Porter Brewer was instructed by letter dated June 14, 1938 to report to the District Superintendent, June 16. He reported June 16 and was withheld from service until June 21, 1938.

Subsequently a hearing was accorded Brewer, following which the District Superintendent, by letter dated August 19, 1938, advised Brewer the penalty imposed in this case will be eight days actual suspension.

Following appeal from the District Superintendent's decision, Superintendent Snoddy, by letter dated August 29, 1938, denied the contention made in behalf of Porter Brewer, thereby sustaining the action of the District Superintendent.

The case was then appealed to the Assistant to Vice President, who decided, and by letter dated October 3, 1938 advised the employes' representative that twelve and one-half days shall be entered against Brewer's record as an actual suspension.

Following this, the District Superintendent, by letter dated October 7, 1938, advised Brewer the penalty will be an actual suspension of twelve and one-half days instead of eight days.

The Board holds that eight days' suspension having been assessed by the District Superintendent and, on appeal, sustained by Superintendent Snoddy, that, based on the above record of handling of discipline in this case, the subsequent action increasing the suspension to twelve and one-half days was not justified.

The evidence of record discloses no grounds for disturbing the action of the Carrier, except Brewer's record should be corrected to show actual suspension of eight days. The facts and circumstances do not justify claim for compensation for time lost and it should be denied.

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 grounds for disturbing the action of the Carrier, except Brewer's record shall be corrected to show actual suspension of eight days. The facts and circumstances do not justify claim for compensation for time lost and it is denied.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of January, 1939.