

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductor C. D. Marquis, New York District, who was discharged on July 9, 1938, asks immediate reinstatement to his position as Pullman Conductor with all rights unimpaired and pay for time lost."

EMPLOYEES' STATEMENT OF FACTS: "This grievance has been progressed in the usual manner under the rules of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company. Decision of the highest officer designated for that purpose is shown in Exhibit 'A.'"

"The direct cause of discharge was alleged improper handling of passengers on March 7, 1938. At the first hearing and subsequently this conductor's entire service record was introduced as contributory evidence to justify the action taken."

CARRIER'S STATEMENT OF FACTS: "C. D. Marquis was first employed as a conductor by this company July 15th, 1924. He resigned October 26th, 1925, to accept other employment. He was re-employed by this Company May 19th, 1929, until October 1st, 1931, when he was furloughed. He was temporarily recalled from furlough on August 31st, 1936, and worked until October 20th, 1936. He was recalled February 17th, 1938, for the seasonal, Florida traffic and worked until May 6th, 1938, when he was furloughed. In this short service period of 4 years, and 1 day, Marquis committed five serious offenses. First, on October 24, 1924, Marquis rudely insisted that a passenger pay a fare which the passenger fully intended to pay. Second, on June 23rd, 1930, Marquis thrust his head into a motor car, rudely interrogated the owner, and, when told that he would be reported, directly implied The Pullman Company countenanced such behavior and would take no action. Third, having been granted a leave of absence on March 3rd, 1931, Marquis used a note signifying this to obtain free railroad transportation. Fourth, on August 4th, 1931, Marquis assailed two passengers, a man and his wife, with the most abusive language, describing the woman as a 'tart.' Fifth, on March 7th, 1938, basing his actions on an unverified and unjustified excuse, Marquis refused a reasonable request for change of accommodation, lied openly upon the matter, and slandered the characters of the passengers concerned."

"Upon consideration of Marquis's record as a whole, and of the last offense in particular, Marquis was discharged from Pullman service. After a hearing before District Superintendent G. M. Zimmer, Marquis's discharge was upheld. This action was sustained at conferences before Superintendent J. Bryce and Assistant to Vice President B. H. Vroman."

unfitted to be a Pullman conductor. On the basis of Marquis's record, his discharge was entirely justified.

"This Division has repeatedly stated in its awards 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 Conductor Marquis."

OPINION OF BOARD: The employe involved in this dispute was discharged on July 9, 1938, and asks reinstatement to his position as Pullman Conductor with all rights unimpaired and pay for time lost. Employe states that the direct cause of discharge was alleged improper handling of passengers on March 7, 1938 and "at the first hearing and subsequently his entire service record was introduced as contributory evidence to justify the action taken."

The rules of the prevailing agreement permit the discharge of an employe before hearing and do not require carrier to specifically state the grounds for discharge. No minutes of any of the hearings held prior to appeal to this Board were made a part of the record in this case. In fact a copy of the notice of discharge was not furnished until requested by the Board. The notice of discharge is set out below:

"THE PULLMAN COMPANY

July 5th, 1938

Mr. C. D. Marquis
Conductor

As your performance of the duties of the position has not been satisfactory to the Management, your services as Conductor will not hereafter be required.

(Signed) G. M. ZIMMER
Dist. Superintendent"

Although this notice of discharge stated only in general terms the grounds for discharge the record does not show that the employe requested a more specific statement of grounds or that he was denied full opportunity to prepare and submit his defense. The employe offered evidence pertaining only to the alleged improper handling of passengers on March 7, 1938 and objected to the consideration of any other occasions of alleged unsatisfactory service.

In Awards 562 and 775 this Board found that the employes there involved had not been adequately informed as to the charges against them and given an opportunity to refute them. The Board held such procedure grossly improper and a denial of a fair and impartial hearing to which every employe is entitled. While this Board reaffirms what was said in these awards as to the attributes of a fair trial, these opinions are not applicable here. The entire service record of this employe was introduced at the first hearing and employe does not even suggest that he was denied opportunity to refute the charges or establish that he had been theretofore cleared (see Rule 50) of any of the alleged offenses introduced to show his general temperamental unfitness for the position.

The rules of the agreement authorize the procedure followed by the Carrier in this case. The employe was dismissed on the general ground of unsatisfactory performance of duties and he was given an opportunity to refute the offenses with which he was charged. The entire service record of employe was admissible as bearing upon his general temperamental unfitness and the evidence is sufficient to sustain the action taken. (See Awards 373, 430 and 431.) The record shows that employe was given a fair and impartial hearing in accordance with the rules of the agreement which is the main question raised by this dispute.

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 record sustains the action of Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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