

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY

STATEMENT OF CLAIM: "For and in behalf of M. M. Saunders, who is now employed as a porter by The Pullman Company operating out of the Pennsylvania Terminal District of New York City, because The Pullman Company did under date of September 10, 1938, take disciplinary action against Porter M. M. Saunders by penalizing him with thirty days' actual suspension from his regular assignment, which action the Brotherhood of Sleeping Car Porters maintains was unreasonable and unjust and was taken against Porter Saunders because of alleged charges of unsatisfactory service made against Porter Saunders under date of August 28, 1938 and because Porter Saunders was not given a fair and impartial hearing in accordance with the rules of the agreement then and now in force between The Pullman Company and its Porters, attendants and maids, and further, for the record of Porter Saunders to be cleared of these alleged charges and for Porter Saunders to be compensated for the wages lost by him because of this unjust and unreasonable disciplinary action."

OPINION OF BOARD: The employe involved in this dispute was disciplined for alleged violations of rules governing the conduct of all employes of his class. The record clearly shows that the employe did violate certain of these rules.

Petitioner contends that the employe was not given a fair trial. This contention rests upon the fact that statements secured from certain persons with reference to the employe's conduct were used at the hearing and the persons giving the statements were not present for cross-examination by the employe. The record does not show that objection was made at the time to the use of these statements, or that request was made to have said persons appear as witnesses. The objection, therefore, comes too late. It should have been made at the time the statements were offered and cannot be raised for the first time when the case comes before this Board.

Petitioner further contends that the penalty imposed was too severe for the alleged infractions of the rules. Although this Board has the power to review cases involving discipline, it should be very cautious in the exercise of this power. It should not disturb the action of the management in such cases unless the evidence clearly indicates that the management has acted arbitrarily, without sufficient evidence or just cause, or in bad faith. The Board does not have the power to disturb the action of the Management in such cases merely because it thinks the discipline meted out is not what it would have meted out had it been in the position of the Carrier. (See Award Nos. 135 and 232.)

Viewing the record as a whole the Board finds that the employe involved was given a fair hearing and that the record contains sufficient evidence to sustain the action of the carrier in administering discipline. There is nothing in the record to indicate that the carrier acted arbitrarily or in bad faith. The claim will 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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of July, 1939.