

Award No. 1066

Docket No. PM-1027

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "For and in behalf of W. J. Smith, who is now employed by the Pullman Company as a porter operating out of the District of New Orleans, Louisiana, because the Pullman Company did take disciplinary action against Porter Smith by assessing his service record with a 'reprimand' on alleged charges of service derelictions and unfavorable reports on trip leaving New Orleans, May 25, 1939, which charges are unproved; and further, because Porter Smith did not have a fair and impartial hearing, and the disciplinary action taken against him was unjust and unreasonable; and further, for the record of Porter Smith to be cleared of these alleged charges."

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

"Your petitioner further sets forth that in such capacity, it is duly authorized to represent W. J. Smith who is now and for a number of years past has been employed by the Pullman Company operating out of the district of New Orleans, Louisiana.

"Your petitioner further represents that under date of April 18, 1939, a communication was addressed to Porter W. J. Smith by Superintendent T. C. Olney of the New Orleans, Louisiana District, in which Porter Smith was charged with certain derelictions of duty in connection with his service on T. & P. train number 21 from New Orleans to Shreveport, March 25-26, 1939.

"Your petitioner further sets forth that these charges as above stated were denied by Porter Smith.

"Your petitioner further represents that hearing was held on this matter before District Superintendent T. C. Olney on April 20, 1939 after which Superintendent Olney rendered a decision assessing the record of Porter Smith with a 'reprimand.' Appeals from the decision of District Superintendent Olney were made through the regular channels up to and including Mr. B. H. Vroman, Assistant to the Vice President of the Pullman Company, the last officer designated by the Management to handle matters of this sort; and that under date of June 16, 1939 he sustained the decision of District Superintendent Olney.

If necessary to put away berths in morning to provide seats for persons who arise early, avoid making noise.

'Where passengers are permitted to occupy berths on arrival at terminal at an early hour, vacated berths should not be put away too soon—this to avoid disturbing passengers who have not arisen.'

Though Smith made a general denial of the charge that he made unnecessary noise, disturbing sleeping passengers when putting away unoccupied sections 2, 3, and 12, about 6:00 A. M., the inspector observed, and reported, such disturbance.

"Smith's service record shows that, within the short space of eight months from the trip in question, he had previously been disciplined (pp. 4, & 5, Exhibit A): twice for failing to call attention to, or explain the operation of, lower-berth ventilation; once for failing to address passengers properly; once for failing to awaken a passenger properly; and twice for repeatedly placing his bare hands on berth fronts. Smith waived hearings and readily accepted discipline on these charges. Smith's failure, on the subsequent trip of March 25th and 26th, 1939, to call attention to, or explain the operation of, lower-berth ventilation; to address passengers properly; to awaken passengers properly; to refrain from placing bare hands on berth fronts by using a soft cloth; and to avoid disturbing sleeping passengers by putting away berths unnecessarily noisily and early; show clearly his lack of interest in his job, his carelessness, and that he had not learned his lesson. His actions further prove the necessity on the part of this Company to maintain constant vigilance and supervision over the service performed by its employes on the road. It was the passenger service inspector's duty to report what he actually found Smith doing, or failing to do. This is all the inspector did. Had Smith's services been good, and 'O. K.' report, to be placed on Smith's record, would have ensued; but Smith's services were not good. He was guilty of numerous derelictions for which he had been quite recently disciplined. On the basis of the inspector's report, and in an effort to make and keep Smith a good porter, further discipline was necessary and thoroughly justified. His claim to escape the discipline administered is without justification and should be denied.

"This Board has repeatedly held that disciplinary measures undertaken by management, in the absence of proof of managerial abuse, shall not be disturbed. There has been no managerial abuse in this case." (Exhibits not included.)

OPINION OF BOARD: The record discloses no violation of the requirements of the Agreement bearing upon discipline. The employe was not disciplined without a hearing, and he was notified in writing of the time and place of the hearing and of the specific charges preferred against him. At the hearing both the employe and his representative were given ample opportunity to present any facts or arguments pertinent to the charges. There are no rules specifying the types of evidence that must be submitted at the hearing, and the evidence adduced by the carrier under the circumstances of this case was not such as to detract from the fairness or impartiality of the hearing.

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

The facts of record disclose no adequate grounds for disturbing the disciplinary action of the Management.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1940.