

Award No. 1067

Docket No. PM-1040

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 L. Harden who is now employed as a porter out of the Chicago Eastern District by the Pullman Company because the Pullman Company did take disciplinary action against Porter Harden by assessing the service record of Porter Harden with a 'caution' on alleged charges of failure to comply with the regulations of the Company while in service on a trip April 10-11, 1939 and trip of April 13-14, 1939, which charges are unproved; and further, because Porter Harden 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 Harden to be cleared of these alleged charges and disciplinary action placed against his service record by reason thereof."

EMPLOYES' 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 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 Leo Harden, who is now and for several years past has been employed by the Pullman Company as a porter operating out of the Chicago Eastern District.

"Your petitioner further sets forth that under date of May 24, 1939 Porter Harden was charged with certain derelictions of duty while operating as a porter on car Mt. Hilgard, Line 31, Chicago to Los Angeles, April 9-11, 1939, and with certain other alleged derelictions of duty while a porter on car Mt. Ord, line 31, Los Angeles to Chicago April 13th and 15th, 1939, this charge being based upon a report of a 'Passenger Service Inspector.'

"Your petitioner further sets forth that under date of April 29, 1939, Porter Leo Harden in statements made to Superintendent Ruddy of the Chicago Eastern District denied said charges.

"The petitioner further sets forth that on May 26, 1939 hearing was held in the office of Superintendent Ruddy on the above mentioned charges, after which, under date of June 2, 1939 Porter Harden's service record was assessed with a 'caution.'

"Your petitioner further sets forth that appeal from the decision of Superintendent Ruddy was made through the regular channels up to and

* * * Between 9:00 and 10:00 o'clock I was busy cleaning my vestibule and washroom between Seligman and Kingman. I wasn't asleep. * * *

This last is no denial of the charge that Harden slept between 9:40 A. M. and 9:55 A. M. The A. T. & S. F. Railway reports that their train No. 23 arrived at Seligman, April 11th, at 7:30 A. M., the scheduled stopping time. The scheduled stop for Kingman was 9:00 A. M. It is manifest that a porter cannot be permitted to sleep when supposed to be on duty. Attention must be given both passengers, and car. The passengers' requests, where possible, must not only be granted, but anticipated. By sleeping on duty, Harden left both his car unguarded, and passengers unattended.

"The instructions contain the following requirement:

'Porter must use the small step ladder in handling upper berths. Standing on seats and arms is prohibited.'

In spite of Harden's later denials, he was twice observed in violation of this instruction. On April 11th he was standing on the arms of sections No. 4, No. 5, and No. 9, when putting these berths away. Though the small step ladder was nearby, Harden made no attempt to use it. On April 14th, Harden was reported for standing on the seat cushions of section No. 3, and for failing to use the small step ladder.

"The complete unreliability of Harden's testimony is evident from: one, his attempt to prove that he was not sleeping between 9:40 A. M. and 9:55 A. M., April 11th, by showing that he was up between 7:30 A. M., and 9:00 A. M. of this date (between Seligman and Kingman); two, his reporting the hour between 9:00 A. M. and 10:00 A. M. as occurring between Seligman (7:30 A. M.) and Kingman (9:00 A. M.); three, his obviously false attempt to justify his failure to hang a 'Quiet' sign in the smoking room of car MT. ORD on April 13th by fabricating a tale about a shortage, when, if the alleged shortage had existed, he could so easily have protected himself by following Company instructions in recording the shortage. These failures on Harden's part to point out, and explain, lower-berth ventilation; to remain awake, and active, when supposed to be on duty; to hang a 'Quiet' sign in accordance with Company instructions, when the equipment was present; and, on two occasions, to employ the small step ladder in putting away sections, thus avoiding standing on seats, or seat arms, in violation of instructions; fully justify the 'caution' with which Harden's record was assessed. His claim should be denied.

"The Third Division of the National Railroad Adjustment Board has repeatedly held in its Awards that, in the absence of clear abuse of discretion, they will not interfere with control by the employer over the employee. There has been no abuse of discretion in the discipline assessed Harden in the instant case." (Exhibits not included.)

OPINION OF BOARD: The record discloses no violation of the requirements of the Agreement bearing upon discipline. The employee 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 employee 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 employes 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.