Award No. 1482
Docket No. PC-855

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul W. Richards, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductor W. T. Martin, Chicago Western District, who was discharged on June 21, 1938, asks immediate reinstatement to his position as Pullman Conductor with all rights unimpaired and pay for time lost."

STATEMENT: This is a resubmission of the case covered by Award 862 in which the Board remanded the matter for further hearing. The facts and arguments set forth in Award 862 as well as in the resubmission of the case will not be restated.

OPINION OF BOARD: Upon a prior reference of this dispute, Award No. 862 was made. Because of its requirements, a second hearing before Mr. H. G. Jones, District Superintendent, Pullman Company, was held at the Union Station, Chicago, Illinois, on April 15, 1940. On April 23, 1940, Mr. Jones notified the claimant that his dismissal from service was warranted by the evidence adduced at the hearing. Thereafter the dispute was handled in the usual manner but with failure to reach an adjustment, and it has again been referred to this Division.

As one reason that the claim should be sustained, the Petitioner avers, in substance, that the hearing of April 15, 1940, was conducted by the Carrier in such bad faith and in such an unfair and arbitrary manner, that the hearing did not constitute a full fair and impartial trial, and that resultantly claimant was deprived by the Carrier of the rights, in the presenting of his grievance for hearing and decision, that the agreements granted him. Of the several matters relied on in support of this proposition, the one that Petitioner appears to emphasize is the fact that Mrs. Wolff was not produced by Carrier at the hearing to relate in person her complaints respecting claimant's conduct, and to be cross-questioned by claimant or his representative.

At the hearing of April 15, 1940, the Carrier read into the record substantially the same reports and statements as on the original hearing held before the same District Superintendent on July 11, 1938, and in addition introduced an affidavit that Mrs. Wolff had made in the Pullman offices in Chicago on August 19, 1939, and also a circular, advertising and illustrating a type of Pullman cars constructed with "roomettes" on both sides of the center aisle. Carrier announced that that concluded its evidence.

Mrs. Wolff did not appear or testify at the hearing. Some of the circumstances surrounding that fact are the following. In the docket is a letter sent on April 10, 1940, by Mr. Warfield, the Organization's President, to Mr. Grossman, the attorney who had represented Mrs. Wolff in her claim

admittedly refused to call her. The Carrier deemed it a sufficient explanation of its refusal of petitioner's demands to state at the hearing "It is not the intention of the Company to present Mrs. Wolff as a witness. We see no necessity for it," and "We have her affidavit," and "No request was made to produce Mrs. Wolff at the hearing of July 11, 1938. At that hearing a request was made only for her name."

The efforts of the Petitioner that were successful in clearing away any obstacles, and Petitioner's advising Carrier's Vice President that it was the former's opinion that the latter would have Mrs. Wolff present, all done a number of days before the hearing, negatives, in the opinion of the Board, any seeking by Petitioner of some mere technical advantage through making the demand that this witness be produced. In the opinion of the Board the demand was made in good faith and for the purpose of procuring a decision based on a full disclosure by the primary and best evidence of all the facts and surrounding circumstances and physical facts, as nearly as that end could be attained.

Such an end is always, in principle, the goal in adjusting disputes that are referred to this Board. No really contradictory concept is discoverable in any of its awards. It does happen, however, where the dispute has to do with transactions which have been between the carrier and the employe, that statements made in the docket with reference thereto are so susceptible of being checked with the records and denied if not correct, that, as a result, a practice of convenience has arisen of often accepting statements of fact and sometimes affidavits made by one party that the other has not denied. In this very opinion instances are to be found. But that out of which the practice just mentioned naturally evolved is quite foreign to the essence of the dispute in this case. No statement or affidavit of Mrs. Wolff or of Mr. Martin can be checked with anything that is a verity, unless it be with the surrounding circumstances and physical facts, and these must be proved by testimony. The deciding of this dispute, if done in good conscience, consisted in the discovering, if possible, whether the truth lay with Mr. Martin or with Mrs. Wolff. Purposing a decision that would be to himself a satisfying finality, no fair and impartial trier of that question, with the record as it was at the hearing, would say he saw nothing of necessity for having the witness, Mrs. Wolff, available and ready to testify, or say he saw no need of any cross-questioning. Indeed, it is of common observation that triers of fact themselves, after getting into a case, often find it essential to a right decision to adduce more material for such decision, by themselves further interrogating the witnesses.

In the opinion of the Board the refusal of the Carrier to produce this witness for oral examination and cross-questioning was arbitrary and quite without justification in view of the record in this case, and in the opinion of the Board Mr. Martin was deprived of rights the agreement accorded him in the presenting of his grievance for hearing and decision, and was not afforded a fair and impartial trial under the agreement. Twice there has been opportunity to accord this employe a full fair and impartial hearing as contemplated in the agreement. Twice the Carrier has failed to do so. In view thereof it is the opinion of the Board that the claim should now be sustained.

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 discloses a violation by Carrier of Rule 46 cited by Petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1941.