

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Referee Bruce Blake

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "... for and in behalf of V. V. Javier who is now and for several years past has been employed by The Pullman Company as an attendant operating out of the Chicago District Commissary. Because The Pullman Company did, under date of February 19, 1941, discipline attendant Javier by giving him an actual suspension of 5 days on charges unproved. And further, because such discipline was unjust, arbitrary and in abuse of the Company's discretion. And further for attendant Javier to have his record cleared of said charges and to be paid for the 5 days pay lost by virtue of the actual suspension given as a result of said charges."

OPINION OF BOARD: The Organization contends: (1) that Javier's failure to make down the passenger's reservation for single occupancy was, of itself, insufficient to justify his suspension; (2) that his previous record should not be considered; (3) that he failed to get his make down slip because of laxity of the Company and his fellow employes in handling make down slips. First: The dereliction did not merely consist in a failure to make down the section for single occupancy. He failed to report the matter to the conductor. The Company would probably never have known of the episode if the passenger had not told the conductor about it when he got off the train. Furthermore, Javier called the conductor a liar in the subsequent discussion of the incident. When asked at the hearing whether he called the conductor a liar he answered: "Yes, sir, I just told him 'You are telling a lie.'" His version of the controversy with the conductor makes a distinction without a difference. Second: In disciplinary matters it is not only proper but is essential, in the interest of justice, to take past record into consideration. What might be just and fair discipline to an employe whose past record is good might, and usually would, be utterly inadequate discipline for an employe with a bad record. Third: Whether the Company's method of handling make down slips is the best that could be devised is beside the question in view of this record. The Board is convinced, upon a dispassionate consideration of the evidence, that Javier actually received the make down slip on the occasion in question from Porter Seabron.

FINDINGS: The Third Division of the adjustment Board, 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 evidence of record discloses 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 19th day of November, 1941.