

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Sidney St. F. Thaxter, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF SLEEPING CAR PORTERS**

**THE PULLMAN COMPANY**

**STATEMENT OF CLAIM:** For and in behalf of M. R. Salley who is now, and for a number of years past has been, employed by The Pullman Company as a Porter operating out of the Pennsylvania Terminal District of New York City, New York. Because The Pullman Company did, under date of September 4, 1942, take disciplinary action against Porter Salley by giving him an actual suspension from work of sixty (60) days without pay on charges unproved; which action was unjust, unreasonable and in abuse of the company's discretion. And further, for the record of Porter Salley to be cleared of the charges made against him and for him to be reimbursed for the sixty days pay lost by reason of having been unjustly and unreasonably disciplined.

**OPINION OF BOARD:** This is a case of discipline brought before this Board by the Chairman of the Brotherhood of Sleeping Car Porters. The charge on which the employe was given a hearing on August 26, 1942, was that, "You reported for duty car Emsworth line 2321X PRR train No. 102 at St. Louis July 3, 1942 with the odor of liquor on your breath, necessitating your removal from that car." The letter which set forth this charge also contains the following paragraph:

"At the hearing we will review your record, which includes case of reporting for duty in an intoxicated condition on September 19th, 1926 and again on January 4th, 1928, when you received a final warning in this respect."

The charge against the employe was sustained and he was suspended for sixty days. The petitioner claims that the evidence does not warrant the finding of guilt, and also that it was unfair for the Carrier to have considered the other two incidents mentioned in the letter.

The evidence shows that the employe arrived late for his assignment. He admits this. He denies that he had been drinking and there is testimony of employes that he was sober and had no odor of liquor on his breath. There is evidence from a number of the Carrier's agents that he not only had been drinking, but was intoxicated.

It is not the function of this Board to substitute its judgment for that of the Carrier in matters of discipline. Discretion is vested in the Carrier in this respect and a finding will be set aside only when it is so clearly wrong as to constitute an abuse of discretion. Awards 419, 891, 1022, 2297. Not only was there no such abuse of discretion, but the evidence, while conflicting, amply sustains the charge.

As to the review of the employe's previous record, it was made very clear that he was not being tried again for the old offense. Mr. Schwotzer, the District Superintendent, who heard the case and imposed the penalty, stated at the hearing when the question was raised that, "These two previous incidents are not a part of the charge." This statement is consistent with the notice which was given to the employe that his record would be reviewed and that such review would include the two instances mentioned. We will concede that evidence of previous offenses should not be considered relevant on the question of his guilt of the particular charge for which he is being tried. It is, however, proper to review his record to determine what disciplinary action should be taken if the charge is sustained. Awards 430, 562, 1587, 1599, 2440.

**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 action taken by the Carrier in disciplining the employe was proper.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.