Award No. 2621
Docket No. PM-2510

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of M. Frazier who was formerly employed by The Pullman Company as a porter operating out of the District of Los Angeles, California. Because The Pullman Company did, under date of March 28, 1943, discharge Mr. Frazier from his position as a porter in the Los Angeles, California District on charges unproved; which action was unjust, unreasonable and in abuse of the company's discretion. And further, for Mr. Frazier to be returned to his former position as a porter in the Los Angeles, California District and for him to be reimbursed for all time lost as a result of this unreasonable and unjust action.

OPINION OF BOARD: Porter Frazier after a hearing at which he was present and represented by the Brotherhood of Sleeping Car Porters was found guilty on charges of misconduct and dismissed from the service of the Pullman Company. The claim is the charges filed against him were unproved and that even if considered as sufficiently substantiated the penalty assessed under the facts and circumstances disclosed by the record was so unjust, unreasonable and severe as to constitute an abuse of discretion.

First it is suggested by claimant the charges made against him were so general in form as to make it almost impossible for him to know what they were. We assume by this statement they were so indefinite he was unable to properly prepare his defense and that this fact in itself resulted in an unfair hearing. We can visualize situations where a charge so indefinite as to leave an accused unadvised of what he would be expected to meet might seriously prejudice his rights and when a case involving facts of that character is presented to us we have little doubt as to its result. The difficulty with claimant's position is that the record does not substantiate his contention on the point in question. A careful examination of the charges will disclose they were quite definite and specific and we fail to find anything lacking in them which would justify a conclusion they did not fairly advise claimant as to what he would be required to meet at the hearing.

No useful purpose will be served by reciting in detail the evidence to be found in the record. Summarized, there was testimony on the part of two passengers and the Company conductor which if believed would sustain the charges although claimant denied their statements as to misconduct in toto.

With the evidence in the condition just related, so far as our decision turns on the proposition the charges were unproven, we have for decision merely a question of fact. Under such circumstances in disputes of a character here involved, this Division is committed to the doctrine it is not a proper function of the Board to weigh the evidence and has repeatedly held that if such evidence is substantial and supports the charges the findings based thereon will not be disturbed. A reexamination of our decisions convinces us the rule is sound in principle and should be adhered to. There exists of course a limitation that if the record discloses the trier of facts has acted

arbitrarily, without just cause or in bad faith its action will be set aside. An analysis of all the testimony convinces us there was substantial evidence within the meaning of the applicable rule and we cannot say under the facts presented by the record the carrier's action was arbitrary, without just cause or in bad faith.

We come now to consideration of claimant's contention the penalty imposed was so unjust, unreasonable and severe as to amount to an abuse of discretion. Here again the claimant is faced with a well-established rule of this Division that it will not substitute its judgment for that of the carrier in matters of discipline unless it appears the latter's action is so clearly wrong as to constitute an abuse of discretion. Analyzed this simply means that the action of the carrier must be found to be arbitrary, capricious and in bad faith before it will be disturbed.

It is pointed out that the penalty imposed—permanent dismissal from service of the company—was severe. Quite true. However, under the rule our function is not to substitute our judgment for that of the carrier or to decide what we might have imposed had we been present at the hearing. The severity of punishment standing alone even though it means permanent severance of relations between the employe and carrier is not enough to warrant our interference on the grounds of abuse of discretion. The record must furnish some evidence from which we can say the carrier acted arbitrarily and capriciously. We search in vain for evidence of that character in the record and therefore must conclude the carrier's action in dismissing the claimant from its service, severe as it was, should not be disturbed.

In reaching the conclusion just announced we are not unaware of decisions where this Division has modified discipline fixed by the carrier. However, in the main our conclusions in those cases were based upon some extenuating circumstance or condition disclosed by the record which led to the firm belief that the action taken was so harsh as to be unconscionable. It will be noted that running through all of those decisions is the express or implied recognition of the principle we will not substitute our judgment for that of the carrier in the determination of such a question. In none of them, as we understand their import, did we go so far as to say that where, as in this case the sole question raised was with respect to the severity of the punishment imposed and no evidence of malice or bad faith was apparent from the record, we would interfere with the action taken.

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 employes 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 facts appearing in the record fail to disclose a situation which would justify this Board in modifying or revising the action taken by the carrier.

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 July, 1944.