# Award No. 2632
# Docket No. PM-2342

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Curtis G. Shake, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF SLEEPING CAR PORTERS

## THE PULLMAN COMPANY

**STATEMENT OF CLAIM:** * * * for and in behalf of C. A. Palmer who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of the district of Pennsylvania Terminal, New York City, New York. Because The Pullman Company did take disciplinary action against Porter Palmer by giving him an actual suspension of thirty (30) days on charges unproved; which disciplinary action was unjust, unfair, arbitrary and in abuse of the company's discretion. And further, for the record of Porter Palmer to be cleared of the charges made against him and for him to be reimbursed for the thirty days time lost as a result of this unjust, unreasonable and arbitrary disciplinary action.

**OPINION OF BOARD:** The Pullman porter on whose behalf this claim is asserted was tried on a charge of having committed an assault and battery upon a passenger under his care. The petitioner contends that the evidence does not sustain the finding of guilty and that the suspension of the porter for thirty (30) days was an abuse of discretion. We are asked to set aside the suspension or, in the alternative, to substantially reduce the penalty, with an appropriate restoration of pay.

It will be sufficient to say, without unduly burdening the record, that there was evidence from which the trier of the facts was justified in finding that the porter struck the passenger two or three times while he was in more or less of an intoxicated condition. The record further disclosed that the passenger provoked, if he did not, indeed, invite the assault by calling the porter vile names that no person ought ever to apply to another. There was no evidence, however, that the porter had any reason to believe that it was necessary for him to use force in the proper exercise of self-defense. Mere epithets, however insulting, unaccompanied by threats or manifestations of intent to use force, are never a proper excuse for an assault. More especially is this true when the person uttering the offensive remarks is intoxicated, and the person toward whom they are directed has assumed responsibility for his safety. We must conclude that the finding of guilty is sustained by the evidence.

A long line of awards, too numerous to mention, supports the rule that this Board will not interfere in a case involving discipline, unless the carrier's action is so unreasonable or arbitrary as to force the conclusion that there was an abuse of discretion. In urging that we relax this rule, the petitioner has called our attention to the very apparent disparity in the penalties imposed from time to time for the same or comparable infractions. The matter of fitting punishment to offenses is always a perplexing problem, and no formula has even been devised to insure absolute uniformity and consistency in that

regard. For us to undertake to substitute our judgment for that of the carrier would only destroy this Board's usefulness as a reviewing agency and impose upon it the burden of original jurisdiction in all such cases. Award 1996.

A word of admonition for the benefit, of those charged with meting out discipline may not be here out of place. We would remind them that long experience has demonstrated that certainty of punishment is usually more of a deterent to wrong-doing than the severity of the penalty; that the imposition of excessive penalties is calculated to breed disrespect for authority; and that tolerance and moderation are always safe guides for those entrusted with the solemn responsibility of passing judgment upon their fellow men.

The highly provocative and wholly unjustifiable conduct of the passenger in the instant case was in the nature of a mitigating circumstance which ought to have been, and we trust was, taken into account in fixing the penalty imposed upon the claimant. In any event, suspension for thirty (30) days, under the facts summarized above, does not suggest that there was an abuse of discretion.

**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 claim has not been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1944.