

Award No. 2634

Docket No. PM-2484

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of A. C. Baker 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 Jacksonville, Florida. Because The Pullman Company did, under date of March 1, 1943, take disciplinary action against Porter Baker by giving him an actual suspension of two round trips or fifteen days on charges unproved; which disciplinary action was unjust, unreasonable and in abuse of the company's discretion. And further, for the record of A. C. Baker to be cleared of the charge placed against him and for him to be reimbursed for the fifteen days pay lost as a result of such unjust and unreasonable disciplinary action.

OPINION OF BOARD: The claimant, a Pullman porter, was found guilty of having failed to remove soiled linen from a drawing room occupied by a passenger, "resulting in serious complaint from the passenger," and was suspended for fifteen (15) days.

His rest day, on the occasion in question, was due to extend from 7:00 passenger a week after the alleged incident occurred. At the hearing the porter admitted that the passenger had seen soiled linen in the drawing room when he boarded the train but insisted that it was removed before the room was occupied. The company's representative then asked the porter why he thought the passenger had complained. To this question the porter replied:

"I guess he wanted to get his fare back and seen the linen in there when he came to get the drawingroom, regardless of what would happen to the porter."

That there was some basis for the porter's conclusion is revealed by the following quotations from the passenger's letter:

"For this trip and pullman accommodation I paid \$11.83 fare and \$8.03 pullman, a total of \$19.86. Had I been able to use the parlor for the purpose intended, that is sleep, when I boarded the train I wouldn't have minded it so much. . . .

"My room at the Lake Shore Club of Chicago was clean, attractively furnished and overlooked old Lake Michigan. It was only \$4.40 as against your \$8.03."

Concerning the porter's answer, quoted above, the company says in its original submission:

"Such a statement is ridiculous. Baker was not satisfied with causing this passenger considerable inconvenience and loss of rest, he further charged the passenger with falsifying facts and being dishonest.

In order to believe Baker's story, The Pullman Company also would have to declare false the story of this passenger. We would have to decide that this passenger, a reputable Cincinnati businessman, fabricated this entire story in order to secure the petty refund of \$8.03 which was paid him."

Again, it is asserted in the company's closing response:

"The Board should bear in mind that it takes time to write out complaints. Business men who purchase drawing room accommodations do not write them for the love of writing, or to harass a porter, or to recover fares paid for Pullman accommodations."

The foregoing expressions, made over the signature of the company's Supervisor of Industrial Relations, are highly persuasive that the charge was tried on a false theory as to the proper function of such a hearing. The passenger was not present at the hearing and there is no evidence in the record that he was or was not a business man, reputable or otherwise. Assuming that he was, we know of no principle that would require that more weight be given to his statements than to those of a trusted Pullman porter. Business success does not create any presumption of good reputation for truth and veracity; nor does the fact that a man occupies an humble station in life justify the conclusion that he is not to be believed. In any event, this porter was entitled to have his testimony considered on its merits, without being called upon to answer, also, for having accused the passenger with being guilty of falsification and dishonesty.

While the last two quotations were taken from the company's representations to this Board, rather than from the transcript of the evidence, they reflect the atmosphere in which the hearing was conducted and reveal the theory upon which we are asked to sustain the action taken. It is apparent that the burden was imposed upon the claimant of disproving the complaint made by the passenger. This was improper, and we are forced to the conclusion that the claimant did not have a fair hearing.

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 employees involved in this dispute are respectively carrier and employees 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 claimant did not have a fair hearing.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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