

Award No. 2648

Docket No. PM-2568

**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 C. B. Armstead, W. H. Davis, O. I. Kimmons, and H. A. Pierce who were formerly employed by The Pullman Company as porters operating out of the Agency of Indianapolis, Indiana. Because The Pullman Company did, under date of March 30, 1943, discharge the above mentioned employes from their position as porters in the above mentioned agency on charges unproved; which action was unjust, unreasonable and in abuse of the company's discretion. And further, for the above mentioned employes to be restored to their former positions as porters in the Indianapolis, Indiana Agency and to be paid for all time lost as a result of this unreasonable and unjust action.

**OPINION OF BOARD:** This case is a sequel to that presented by Docket No. 2545, in which we sustained the action of the carrier in discharging a Pullman porter for exhibiting a discourteous and defiant attitude toward the commander of a troop train and with violating his orders. See Award 2647.

These claimants were porters in charge of other cars attached to the same train. They had no part in the controversy between the train commander and the porter involved in Docket No. 2545. Notwithstanding, the claimants permitted that porter to persuade them to abandon the train short of its destination, which they did over the protests and warnings of the responsible officials in charge. For this they were tried, found guilty and dismissed from service. The principal contention made by the petitioner is that the punishment inflicted was so severe as to manifest an abuse of discretion.

We are not authorized to substitute our discretion for that of the carrier, or to resolve the case upon the basis of whether we would have imposed so severe a penalty had we passed upon the facts in the first instance. Unless the punishment is so out of line with the offense as to lead to the definite conclusion that the carrier was actuated by motives of prejudice or passion, we are not justified in disturbing it. These principles are so definitely established in the practice of this Board as to require no citation of authority.

If the claimants had abandoned the train under circumstances indicating that they acted under the compulsion of fear for their own safety, we would have a different situation; but such was not the case. On the contrary, the logical inference is that they acted deliberately, out of protest against the removal of the other porter from the train and with full knowledge of the consequences. For this conduct there is neither justification nor excuse. It is a most serious offense for any person holding a position of responsibility on a passenger train to willfully desert his post of duty. That this was a troop movement, instead of an ordinary passenger train carrying women and chil-

dren, makes little difference, and none whatever from the standpoint of the porters in charge. They cannot be permitted to be the judges of the seriousness of their offenses.

Out of solicitation for the rights of the claimants, we have carefully weighed the severity of the punishment inflicted upon them against the consequences that might be expected to flow from disturbing the action of the carrier, and we have concluded that we should not intervene.

**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 action of the carrier is sustained by the evidence and no abuse of discretion has been established.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1944.