

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 B. Mitchell who is now and for a number of years past has been employed by The Pullman Company as a porter operating out of the Chicago Northern District of Chicago, Illinois. Because The Pullman Company did, under date of June 4, 1943, take disciplinary action against Porter Mitchell by giving him an actual suspension of thirteen days on charges unproved; which disciplinary action was unjust, unreasonable and in abuse of the company's discretion. And further, because Porter Mitchell did not have a fair and impartial hearing. And further, for the record of Porter Mitchell to be cleared of this charge and for him to be reimbursed for pay lost as a result of this unjust and unreasonable disciplinary action.

OPINION OF BOARD: On July 10, 1942, the carrier issued an instruction to its car service employees reading:

"The Company's regulations prohibit the transporting or use of intoxicants. You are hereby given notice that you are not to leave trains to purchase intoxicants for passengers or to carry intoxicants purchased by passengers to trains.

"Any violation of these regulations will subject the offending employee to dismissal."

This regulation was furnished to all of said employees on small printed cards that could be readily exhibited to persons requesting the employees to act in violation thereof.

At the hearing the claimant was confronted with the written statement of a special agent of the Union Pacific Railroad, which recited, upon second-hand hearsay, that on the day in question the claimant was accosted at the station at North Platte, Nebraska, by a train-rider of said railroad; that the claimant was carrying a package wrapped in paper which was seized and opened by said train-rider and found to contain two pint bottles of whiskey; and that a lady at a bar across the street from the depot had said that she sold two pint bottles of the same brand of liquor to a negro. This irresponsible evidence was received and considered over the timely objection of the claimant's representative, although the carrier's spokesman disclaimed any advantage from the alleged sale made by the lady to the negro.

The claimant's explanation of the incident referred to above, to which he consistently adhered, was that while on his way to his train he was hailed by a sailor who was carrying a number of packages; that the sailor asked the

claimant to help with said packages, and thrust one into his hands as they both ran for the train which was then standing in the station; and that the claimant did not know and had no timely opportunity to discover that the package which he was carrying contained liquor.

Considering the impropriety of the carrier's evidence; the presumption of innocence with which the claimant was clothed; and the plausibility of his uncontradicted story, we are constrained to conclude that the claimant was not accorded a fair and impartial trial. His record will, therefore, be cleared of the charge and the carrier will be required to reimburse him for time lost.

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 claimant was not accorded a fair and impartial trial.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1944.