Award No. 2767
Docket No. PM-2610

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 T. M. Pearson 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 Boston, Massachusetts. Because The Pullman Company did, under date of June 11, 1943, take disciplinary action against Porter Pearson by giving him an actual suspension of ten days on charges unproved; which action was unjust, unreasonable and in abuse of the company's discretion. And further, for the record of Porter Pearson to be cleared of the charge in this case and for him to be reimbursed for the ten days' pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: The Pullman Porter in whose behalf this claim was initiated was given a hearing, after proper notice, on charges he had been insolent and disrespectful to and displayed an insubordinate attitude toward Service Inspector Bacon when he boarded the train at Albany, New York.

Aside from the statement subsequently referred to, the evidence consists solely of testimony of the Inspector and the Porter. Each was present and testified at the hearing. At its conclusion the charges were found to be sustained and disciplinary action was imposed as recited in the statement of claim. On behalf of the Petitioner, it contended such action was unjust, unreasonable and in abuse of the Company's discretion.

From a careful examination of the record, it becomes obvious we have for decision an issue depending solely upon disputed questions of fact. Without unduly burdening the record and with fairness to the individuals directly involved in the events leading up to the filing of charges, it can be said there appears to have been between them a decided feeling of ill will engendered by circumstances which are wholly immaterial. In any event, the Inspector stated that when he attempted to board the car on which the Porter was on duty the latter offered him no assistance with his bags, did not put down the stepping box and failed to wipe the hand rails. He then made some suggestions about the condition of the car, whereupon the Porter became angry and in a loud tone of voice indulged in language which it suffices to say, if believed, clearly displayed an attitude of insolence and disrespect toward Bacon as an individual and of disregard of his suggestions as an official representative of the Company. In the main the Inspector's statements with regard to improper conduct and action were denied by the Porter. The result indicates, of course, whose statements were believed.

So much for disputed questions of fact. We turn now to admissions. In a statement made by him to the Company, Pearson, the Porter, among other things said:

> "I told him he was not supposed to think but know before bawling out a person. He said he didn't like my manner. I told him not to argue with me but to write anything that was wrong with the car as my name was at the end and walked away from him."

Faced with Facts as we have related them it is not surprising the Petitioner does not urge there was no evidence or insufficient evidence to sustain the charges, but falls back upon the proposition that in view of the ill will and prejudice of the Inspector toward Pearson, coupled with the fact that he was the only witness relied on to sustain them, we should interfere with the Carrier's discretion in the matter of disciplinary action and render a decision exonerating him from all blame. This, we cannot do. The record is replete with incidents which when carefully scrutinized indicate improper conduct as charged. The Petitioner itself, in its zeal to further Pearson's cause, inferentially admits that situation existed but seeks to excuse it on the ground of bad blood between Inspector and Porter which when accelerated by suggestions from the former, excited the latter and caused him to temporarily forget the responsibilities and obligations of his position. Conceding for our purposes, but not passing upon it, that was the situation, it does not relieve Pearson of responsibility for his own wrongful conduct. Nor is it sufficient in itself to impel a conclusion the punishment imposed was unjust or unreasonable.

In disciplinary disputes when probative evidence appears of record this Division, in decisions too numerous to require citation, although retaining to itself the right to carefully scrutinize all the facts and circumstances resulting in imposition of punishment and to intervene if in its opinion the situation warrants, has established and consistently followed the rule it will not take that action unless the evidence clearly indicates the Management acted arbitrarily, capriciously or without regard to the fundamental rights of the accused.

A careful examination of the record in this case discloses nothing of sufficient importance to justify our intervention under the rule to which we have just referred and the action of the Carrier must be upheld.

Early in this opinion reference was made to a statement not heretofore adduced. We comment on it now, not because of its probative value, but for another purpose. During that proceeding the claim was made by Pearson that another Inspector was on the train on the date of the incident in question and that he made no comment about items complained of by Bacon particularly with respect to the untidy condition of the Pullman car in question. The witness was not present but when on interrogation by Representative of the Management as to whether they desired a statement from him the Representative of the Petitioner gave an affirmative answer, it was agreed his statement would be obtained and placed in the record and considered as evidence adduced at the hearing. The statement was procured and appears in the record. Since decision was not rendered until June 11, we must assume it was considered for the hearing was held on May 21. While its evidentiary value was of little importance, since the Inspector, one J. P. Reid, could not recall having inspected Pearson's car, although he frankly stated that if he made no report on it it was because he found none was necessary, the circumstance that the Company was willing to delay the outcome of the hearing until such statement could be obtained is an indication its action was not arbitrary or taken without regard to Pearson's rights and was entitled to and given some consideration in arriving at the conclusion we have just announced.

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 sufficient cause for disturbing the disciplinary action of the Carrier 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 19th day of January, 1945.