

Award No. 2768

Docket No. PM-2642

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 William Morrow 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 Western District. Because the Pullman Company did, under date of August 5, 1943, penalize Porter Morrow 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 Morrow to be cleared of the charge made against him and for him to be reimbursed for the ten days' pay lost as a result of this unjust action.

OPINION OF BOARD: William Morrow, the Pullman Porter in question, was suspended for ten days on charges of having refused to comply with the instructions of both the Train and Pullman Conductors regarding the adjustment of the tail gate for safety reasons. The claim is charges were unproved and that action taken by the Carrier was unjust, unreasonable and in abuse of the Company's discretion.

No reason exists for a detailed review of the evidence to be found in the record. Summarized, a Train Conductor, a Pullman Conductor and a Trainmaster all made statements to the effect a Pullman Porter refused to close and properly fasten the tail gate, as instructed by each of the Conductors. The Porter claims he did close such gate, that he did not refuse to do so, and denies generally all acts of misconduct attributed to him by the other three witnesses.

Arguments advanced in support of the claim were: (1) the testimony of the three witnesses for the Carrier was false, (2) the charges were a frame-up, and (3) it would be unreasonable to contemplate or recognize a situation where a Porter would pursue a course of conduct which would result—as this one did—in his being put off the train at Trilby, a small station in Florida, and required to purchase his own ticket with his own money in order to ride the train to its destination.

So far as our decision rests on the contention the testimony of the Carrier's witnesses was false, our decision must be against the claimant. There was substantial competent evidence to sustain the charges. Under such circumstances this Division has repeatedly announced adherence to the rule that it will not weigh the evidence or substitute its judgment for that of the Carrier in the determination of its force and effect. The rule is sound in principle. Reasons for its pronouncement are fully discussed in many of our decisions and need not be repeated here.

On the claim the charges were a frame-up, a decision against the petitioner is also required, since, aside from the existing conditions and circumstances which are suggested as possibly justifying that conclusion, there was no testimony of any character which either directly or by inference could possibly afford a basis for it.

With respect to the third and last contention, our decision must be so obvious as to preclude necessity for its pronouncement. While this Board is not required to, and does not, follow the strict rules of evidence adhered to by the courts in the matter of acceptance or rejection of evidence, it will not give credence to a claim based upon surmise, speculation, supposition, or conjecture. Claimant's third position smacks of all four and is without merit in that it is not supported by any real or substantive evidence.

This case presents no facts which will permit a finding the action of the Company in suspending the Porter in question was unjust or unreasonable, nor is there any tangible evidence to justify a finding of abuse of discretion, which, as we have held, is necessarily vested in the management in disciplinary cases. On the contrary, the record clearly and definitely reveals a situation which merits the suspension.

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 employe involved in this dispute are respectively carrier and employe 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 evidence of record supports the action of the Carrier.

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.