

Award No. 2866
Docket No. PM-2865

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of H. B. Adams 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 at Buffalo, New York. .

Because The Pullman Company did, under date of March 11, 1944, take disciplinary action against Porter Adams by giving him an actual suspension of three and one-third days on charges unproved; which action was extreme, drastic, too severe, unjust, unreasonable and in abuse of the Company's discretion.

And further, for the record of Porter Adams to be cleared of the charge preferred against him in this case and for him to be reimbursed for the three and one-third days' pay lost as the result of the above mentioned action.

OPINION OF BOARD: Employee was disciplined because of a failure to make prompt reports of an altercation and because of his refusal to sign a statement which he gave to District Superintendent of Carrier at Boston the morning following the incident. Discipline was not based upon a charge of misconduct of employee because of participation in the altercation. Nor would there be justification for such a charge against him for the record clearly shows that he was the victim of an unprovoked assault by a passenger who had imbibed too freely of intoxicating liquor.

The discipline is grounded solely upon violation of instructions and the charges are thus summarized by Carrier in its notice of hearing:

"You made no report of the trouble to the Pullman or Train Conductors; you failed to make a prompt report of your injury upon arrival at Boston; you failed to make a statement covering an unusual incident occurring enroute and also refused to sign the statement which you gave District Superintendent Murray on December 4, 1943."

These charges are based upon a violation of certain instructions issued by Carrier, the pertinent provisions of which read:

"INSTRUCTIONS FOR CAR SERVICE EMPLOYEES

* * * *

"Employees must make immediate report of any injury (including scratches or bruises) sustained while on duty, no matter how trivial or insignificant it may appear.

"Incidents of unusual nature must be reported at once to conductor and written reports made by employees to District Representative upon completion of trip. Important matters should be reported in person upon arrival."

We doubt if the record shows a violation of the instructions in failing to report to the Train or Pullman Conductor. The Train Conductor arrived at the scene immediately after the termination of the trouble and got a full report. The Pullman Conductor did not arrive on the train until it reached Albany, which was past midnight, and report was made to him the first thing in the morning.

We conclude, however, that the record justifies the Carrier in finding that instructions were not followed when employe got to Boston. Claimant asserts that upon arrival at Boston he had his breakfast and went back to Porters' quarters. He stated he intended to report to District Representative. Why he did not promptly report before going back to Porters' quarters does not appear. At any rate when he arrived there he learned that the District Representative had left a call for him. He then called the District Representative. There is some variance in the testimony as to what was said in the telephone conversation. Carrier claims that employe was then instructed to come to the office and make a report, which at first he refused to do, claiming he would make his statement at Buffalo. Upon being told that if he did not follow these instructions he would not be permitted to return to Buffalo on his regular assignment he did report. Employe states that Representative told him to come down and make a signed statement and that employe said he would come down but would not sign a statement.

Be that as it may, in our opinion the record justified the Carrier in concluding that employe would not have come down to the office of Carrier had he not been called by the Representative and hence that there was a violation of instructions. In view of this holding we need not consider whether refusal to sign written statement was a violation of the instructions.

There is much to be said in mitigation of employe's conduct. He was no doubt emotionally upset by the unprovoked assault, but it is important for the protection of both the employe and carrier that prompt reports be made of incidents of this character. We are not prepared to say under circumstances here involved, that there was an abuse of discretion. The rule is well settled in this Division that we should not interfere with disciplinary measures unless it appears that Carrier acted in bad faith, arbitrarily, capriciously or upon a fundamentally wrong basis. Award 1632.

Upon the record before us, we do not believe it would be proper to interfere.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1945.