# Award No. 2895
# Docket No. PM-2938

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**James M. Douglas, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF SLEEPING CAR PORTERS

## THE PULLMAN COMPANY

**STATEMENT OF CLAIM:** * * * for and in behalf of Jack Ealy 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 Central District.

Because The Pullman Company did, under date of June 14, 1944, take disciplinary action against Porter Ealy by giving him a Warning on charges unproved; which action was unjust, unreasonable and in abuse of the company's discretion.

And further, because Porter Ealy did not have a fair and impartial hearing as contemplated under the rules of the current agreement between The Pullman Company and the class of employes to which Porter Ealy belongs by reason of the fact that it denied to Porter Ealy the right to be confronted with and have an opportunity to cross examine the witnesses who gave testimony against him and upon which the disciplinary action was based.

And further, for the record of Porter Ealy to be cleared of the charge made against him and for the disciplinary action of a Warning to be expunged from his service record.

**OPINION OF BOARD:** Petitioner, Porter Ealy, was charged with being discourteous to several passengers who boarded his car at Baltimore in that he failed to give proper service in handling their baggage and in preparing their berths. He was found guilty and a Warning was assessed against his record.

Petitioner claims (1) that the charge was not proved; and (2) that he did not have a fair hearing because he was not confronted with the witnesses whose statements were used to prove the charge and was thereby denied the opportunity to cross examine them.

We will first dispose of claim 2. This Division has settled the rule that a charge may be proved solely by the written statements of witnesses without producing the witnesses in person. Accordingly claim 2 is denied.

Turning now to Petitioner's claim that the charge was not proved, we observe the well established doctrine that in reviewing discipline cases the Board will not disturb the action of the Company unless the record clearly shows the Company has acted "arbitrarily, without sufficient evidence or just cause, or in bad faith." If the action of the Company is based on insufficient evidence then it follows that such action was arbitrary and should be set aside. We find the evidence was insufficient to sustain the charge.

The charge was discourtesy to several passengers who boarded the train at Baltimore. The evidence shows the "several passengers" to be a family group of three, a daughter of middle age and her two aged parents. The daughter is the real complainant.

**As to the baggage:** No red caps were available to assist the family. The train did not pull all the way into the station so, at the direction of a flagman, they boarded a day coach three cars ahead of their Pullman, deposited their baggage there, and walked back through the intervening cars to their Pullman. Upon reaching their car the daughter asked the Petitioner to go forward and fetch the baggage from where they had left it. He answered he could not then leave his car as he was porter-in-charge. Thereupon they brought back the baggage themselves. At the time of the request the Petitioner stated he was taking up transportation, both rail and Pullman. After finishing that he had to prepare for about twenty passengers detraining at Washington. He stated he told them he would get their baggage later. The Petitioner's action with respect to the baggage could not have offended the daughter because in her statement she declared: "If this had been the only complaint, nothing would have been said, of course. . . ." This declaration may be taken as an acquittal of the charge by the complaining witness herself. While it is true discourtesy can be shown by several trivial incidents which, taken together, indicate a disposition to be impolite and inconsiderate, yet it is evident the daughter did not feel at the time of the event the Petitioner had been discourteous to her. By her own statement Petitioner's failure immediately to get the baggage did not warrant complaint at the time.

**As to the berths:** The car contained twelve sections. Between 6:30 and 7:30 P. M. the Petitioner was about to prepare the berths in the family's section when the daughter asked him to wait as there was no place else to sit. Because of this request she charges the Petitioner unnecessarily delayed preparing their berths until last. The father's statement averred that when he asked Petitioner (no time stated) to make up the berths the Petitioner answered they "would have to wait until the rest were finished." The father made no objection nor demanded any explanation. The family continued sitting in the section and were joined by other passengers all conversing together.

The evidence as to the time the berths were prepared is conflicting. A soldier occupying the opposite section stated: ". . . A little later in the evening about 11 o'clock, I believe the porter was asked to make up the berths but I believe he said he was busy and would make it up a little later which he did." Another soldier puts the time the Petitioner was requested to make the berths at around 9:00 P. M. Both soldiers stated Petitioner's work was heavy. Petitioner stated he made the berths shortly after the train left Pittsburgh.

We must not substitute our judgment for the Company's in an attempt to explain the Petitioner's actions. If the evidence shows discourtesy the Company's right to mete out discipline is unquestioned. Our purpose in pointing out Petitioner had his hands full is only to show Petitioner's delay in preparing the berths was not necessarily due to an intent to be disobliging.

There were other derelictions of duty mentioned in the statements. They were not included in the charge nor proved but were abandoned. There was mention about Petitioner's "obnoxious" attitude but this also was not supported by the evidence. A person's demeanor, manner of speech, failure to answer, or any one of these without more may amount to the height of discourtesy. But for such a ground to sustain a charge it should be described in what manner it was offensive.

In a case of this nature it seems significant that the actions of the Petitioner were not regarded as sufficiently improper to cause a complaint to be lodged with the Conductor who gives him a clean record. Petitioner has had such a record during the course of his employment by the Company, which began April 16, 1926.

The discipline imposed by the Company was based on insufficient evidence. Petitioner's claim 1 is sustained and the Warning ordered expunged from Petitioner's service record.

**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 evidence did not sustain the charge.

AWARD

Claim sustained as stated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1945.