

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

James M. Douglas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of W. Johnson 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 Baltimore, Maryland.

Because The Pullman Company did, under date of June 25, 1944, take disciplinary action against Porter Johnson by suspending him from service for 31½ days without pay on charges unproved; which action was unjust, unreasonable, arbitrary and in abuse of the Company's discretion.

And further, for the record of Porter W. Johnson to be cleared of the charge made against him in this case and for him to be reimbursed for the 31½ days pay lost as a result of having been unjustly disciplined.

OPINION OF BOARD: Petitioner, Porter Weaver Johnson, was charged with assaulting the Pullman Conductor in charge and in doing so with disturbing the passengers in the car. Petitioner was found guilty and was suspended for 31½ days.

Petitioner claims the charge was not proved. We find the charge was proved by sufficient evidence.

In support of the charge the Conductor stated Petitioner was blocking the passage at the end of the car. The Conductor placed his hand on Petitioner's chest to indicate he wanted to get past him when Petitioner struck him six times, knocking off his cap and his glasses. He cried for help. His cries were answered by a passenger who assisted him to the smoking room. He requested the Train Conductor to arrange for a doctor to meet the train which the Train Conductor did not do. He was later examined by a railroad medical examiner who found a contusion on the left eye and on the right hand. The passenger stated he did not see any blows struck but heard the call for help and on responding to it found the Conductor with "his glasses broken, a mark on his cheek, a cut on the back of his right hand, his hat crushed and the name plate broken." The passenger noticed Petitioner standing near the Conductor. The passenger asked Petitioner if he (Petitioner) had hit the Conductor and Petitioner answered: "Yes I hit him and I had a right to do it." The passenger then reported the occurrence to the Train Conductor.

Petitioner's defense was that the Conductor became angry about Petitioner's not collecting the calls and berated him in a loud voice. Two passengers confirmed this but did not witness the altercation. Later Petitioner complained to the Conductor about being called down before the passengers. Whereupon, according to Petitioner's statement, "The conductor said I am

your boss and if you don't do what I say I will throw you off the train, then he grabbed me by the collar. I threw my arm up to keep him from hitting me in the face. And his eye glasses fell to the floor."

Here we have a clear dispute of fact. It is not for us to judge the credibility of the witnesses. The evidence was amply sufficient to prove the charge.

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 charge was proved by sufficient evidence.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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