

Award Number 3125

Docket Number PM-3179

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 A. Venable who is employed by The Pullman Company as a porter operating out of the district of New Orleans, Louisiana. Because The Pullman Company did, under date of January 25, 1945, take disciplinary action against Mr. Venable by giving him an actual suspension of fifteen (15) days on charges unproved; which action was unjust, unreasonable and in abuse of the Company's discretion.

And further, for the record of Mr. Venable to be cleared of the charges made against him in this case and for him to be reimbursed for the fifteen days pay lost as a result of the unjust and unreasonable action taken against him.

OPINION OF BOARD: In this discipline case Claimant asserts (1) that he did not have a fair hearing; (2) that the charge against him is not sustained by the evidence. The charge of an unfair hearing is based upon his request for the presence of certain witnesses at the hearing from whom written statements had been taken by Carrier. Carrier offered to continue the hearing in order to secure a statement from Conductor Epperson from whom no statement had been secured, but Organization did not accept this offer.

We have held in several previous awards that the fair hearing contemplated by the Agreement does not mean that employes have the right to have witnesses present at the hearing. It does mean that the person on trial must be afforded a reasonable and timely opportunity to prepare and submit his defense. As we said in Award 2793:

"This means that the names and addresses of the persons whose written statements are to be used against him shall not be arbitrarily withheld from him, and that he shall be afforded reasonable time, either before or after the hearing is commenced, if he asks it, to contact said persons and to make his own investigation as to the truthfulness of their statements."

There was no request in this case for further time to prepare a defense, nor was there any request for names of witnesses; nor does it appear that Claimant was taken by surprise by the nature of the evidence produced against him. We believe there has been no violation of the rule as to a fair hearing.

The remaining question then is: Does the evidence sustain the charge that Claimant refused his assignment on June 8, 1944? On this issue there

is the usual sharp conflict in the evidence. If Claimant's story is true there is no basis for the discipline. On the other hand if Carrier's witnesses are believed there is a reasonable basis for the thirteen days' suspension meted out to Claimant. In refutation of Claimant's story Carrier produced the statements of Agent Hornsby and Pullman Conductor Crosby which in effect indicate that Claimant arbitrarily refused the assignment. Although Porter Webb did not know the name of the Porter relieving him, his statement also to some extent corroborates the position of Carrier.

As we have stated so many times we cannot weigh evidence or pass upon the credibility of witnesses. Our duty rather, is to determine whether the discipline has been meted out arbitrarily or upon an unlawful or unreasonable basis. We have examined the record with care and find no justification for disturbing the discipline of the Carrier.

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 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 19th day of February, 1946.