

Award No. 3171

Docket No. PM-3215

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of A. Minor who is now, and for several years past has been, employed by The Pullman Company as a porter operating out of the district of Atlanta, Georgia.

Because The Pullman Company did, under date of April 11, 1945, take disciplinary action against Porter Minor by giving him an actual suspension of thirty days on charges unproved; which action was unjust, unreasonable and in abuse of the Company's discretion.

And further for the record of Porter Minor to be cleared of the charge in this case and for him to be reimbursed for the thirty days pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: Claimant was charged with becoming involved in an altercation with a passenger during the course of which he cut him with a knife. The Carrier suspended the Claimant from the service for 30 days. The Organization contends that the charges were not proved and seeks to have the Claimant's record cleared and reimbursement made for lost pay.

The record shows that Claimant was in regular line service as a Pullman Porter enroute from Atlanta, Georgia to Wilmington, North Carolina on February 10, 1945, the date of the incident out of which this claim arose. About 11:00 P. M., a soldier approached Claimant and asked if he might share upper berth No. 6 with a lady occupant who had allegedly consented thereto. Claimant informed the soldier that it was against the rules and refused his permission. About thirty minutes later, the soldier again approached upper berth No. 6 and talked with the lady occupant thereof for ten minutes or more. A military policeman came through the car about this time and ordered the soldier to go to bed. The soldier thereupon approached Claimant as he sat on a camp stool at the end of the car and the altercation then took place. Claimant says that the soldier called him some vile names, grabbed him by the neck and attempted to twist his neck. Claimant says that he took his knife from his pocket, opened it and struck the soldier with it. The soldier says he approached the Claimant as he sat on the stool at the end of the car and asked him if might share upper berth No. 6 with the girl if she would consent. He says the Claimant said, "No, it's against regulations". An argument followed which resulted in the Claimant drawing a knife and cutting him on the left side. The soldier says he hit the Claimant and Claimant ran.

The record establishes that the altercation took place, the conflict in the evidence being as to the statements made by the participants prior to its

occurrence and the manner in which it occurred. The record shows that the gash was about four inches long and a half inch deep on the side below the left shoulder. We think it is fairly established by the record that the soldier was the aggressor. The question to be determined is whether Claimant was justified as a matter of self-defense in drawing his knife and slashing the soldier.

As an abstract proposition, one who is assaulted is entitled to use the force necessary to repel his assailant. But with a car full of people and the Conductor working in the other end of the car in which the altercation occurred, we do not think Claimant had any justification for drawing a knife, even though it was a small one, and using it on the soldier. If, as Claimant says, that he took the knife from his pocket, used both hands to open it and slashed the soldier to protect his life, without making any noise or outcry, it is evident that he made little effort to escape or secure aid. The use of weapons of any kind ought not to be condoned except under most serious circumstances. The Carrier determined after an extensive investigation that Claimant use more force than was required to repelling his assailant, to-wit, by using a knife. While there are many mitigating circumstances we think the evidence was such that we cannot interfere with the judgment of the Carrier in suspending Claimant for thirty days.

It is not the province of this Board to weigh the evidence if there was testimony which, if believed, was sufficient to sustain the action of the Carrier. We think the evidence was sufficient for this purpose. The Claimant contends that the suspension for thirty days was unjust and unreasonable. While the record shows that Claimant was not the aggressor and the altercation warranted defensive action on his part, it is evident that the Carrier took this into consideration as a mitigating factor when it assessed a thirty day suspension. If there had not been mitigating circumstances present, the Carrier could have properly assessed a much more severe penalty. The case is not one that permits of interference by this Board.

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 current Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1946.