

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 P. B. McKissick who is now, and for a number of years past has been employed by The Pullman Company as a porter operating out of district of Washington, D. C.

Because The Pullman Company did under date of May 4, 1945, take disciplinary action against Porter McKissick by giving him an actual suspension of sixty (60) days without pay; which action was unjust, unreasonable and based upon charges unproved.

And further, for Porter McKissick to have his record cleared of the charge in this case and to be compensated for the loss of pay as a result of him being unjustly and unreasonably suspended on charges unproved.

OPINION OF BOARD: Claimant was charged with committing an assault upon a Pullman passenger and injuring him to such an extent as to require that he be given immediate medical attention. The Carrier suspended the Claimant from service for 60 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 assigned to Pullman Car 64 operating from Chicago to Washington on February 27-28, 1945, the date of the incident out of which this claim arose. It appears that Porter O. B. Moore was assigned to Pullman Car 65, the car immediately ahead of Pullman Car 64. About 2:00 A. M. on February 28, a passenger awakened Porter Moore and asked for a berth ladder for the purpose of putting another passenger to bed. Porter Moore advised the passenger that he was off duty and that the Porter (Claimant) in Car 65 was in charge and would render the requested service. The passenger went into Claimant's car and asked for a berth ladder. The alleged assault then occurred, there being a serious conflict in the evidence as to what was said and done. The evidence is clear that the passenger was intoxicated and belonged in the fifth car ahead. It is also shown that he had a triangular cut over the left eye and some skin abrasions on the face after the altercation.

Claimant says that he was laying down in the smoking room in Car 64 when the passenger came in and asked for a berth ladder to help some other passenger into his berth. Claimant says that he told him all his passengers were in bed and that he had no need for a ladder. The passenger insisted and finally grabbed the Claimant by the wrist and began to twist it. Claimant says that he grabbed a berth key which he habitually kept under his pillow and struck the passenger with it three times. The passenger left and Claimant went to sleep without making any report of the incident. He says the passenger was very drunk. He fixes the time at 2:37 A. M. He stated that his rest period commenced at 2:30 A. M.

The passenger says that at 2:15 A.M., he assisted another passenger to Car 65 where he had an upper berth. He awakened the Porter in Car 65 to obtain a berth ladder and was told that the Porter in Car 64 was in charge and would render the service. The Porter in Car 64 (Claimant) was asleep and he awakened him and asked for a berth ladder. He says the Porter told him it was too late and for him to get out of there when he insisted on the service being rendered. He says Claimant leaped at him, encircled him with his legs and bit him over the left eye. The wound bled profusely. A doctor boarded the train at Cumberland and gave him medical attention. The passenger reported the incident to the train Conductor immediately.

Train Conductor Schrock, who was in charge of the train and had been a conductor for 46 years, immediately investigated the matter. He says that the passenger came to him at 2:20 A. M. and told him the Porter in Car 65 had bit him over the left eye, that there was a cut over the left eye and his face was covered with blood. The Conductor went back and interviewed Claimant and asked him "what was going on back here, the man here said you bit him when he asked you for a ladder". Claimant said, "He is a God-damned liar, I hit him with this," showing a berth key which he was holding in his hand. Claimant told the Conductor that he was laying there and the passenger came and jerked him and pulled him around and did not say anything to him about a ladder, that he did not know what was going on so he just hit him. He made no mention of the passenger grabbing or twisting his wrist at that time. There is other evidence in the record bearing upon the controversy.

We think the evidence shows by a clear preponderance that Claimant should have been on duty and not in his berth. The train Conductor certainly noted the time as he said he did. The passenger involved and Porter Moore both sustain the train Conductor as to the time of the incident. It is very noteworthy that Claimant did not report the incident promptly and did not mention the passenger grabbing and twisting his arm when he told his story first to the train Conductor. These are circumstances which weigh heavily in determining the credibility of the parties involved. It is not our function to weigh the evidence but controlling factors are present which warrant the Carrier in arriving at the conclusion it did in considering the evidence and circumstances involved in the case. We fail to find any evidence that the Carrier was arbitrary or unreasonable in the action taken. There is ample evidence, if believed to sustain the charge. Under these circumstances, this Board is not authorized to interfere with the Carrier's decision. No basis for a sustaining award exists.

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 there was no violation of the current Agreement.

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.