

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: . . . for and in behalf of H. L. Hawkins who is now, and for sometime past has been, employed by The Pullman Company as a porter operating out of the Atlanta, Georgia district.

Because The Pullman Company did, under date of June 26, 1945, take disciplinary action against Porter Hawkins by giving him an actual suspension of thirty days on charges unproved; which action was unjust, unreasonable, arbitrary and in abuse of the Company's discretion.

And further, for the record of Porter Hawkins to be cleared of the charge in the instant 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: The carrier preferred charges against the claimant, a Pullman porter. The charge was—"that while assigned to service on car 2463, Main 50614, enroute from Greensboro, N. C. to Camp Anza, California, you were insubordinate, in that you failed to carry out instructions given you by the conductor to keep your car in cleanly and orderly condition, and, further, upon your arrival at Camp Anza, California, you assumed a disrespectful and argumentative attitude toward a representative of the Union Pacific Railroad, and a Pullman Service Inspector."

Then comes a paragraph which reads as follows:

" . . . A previous incident appearing on your service record involving your failure to keep your car in a cleanly and orderly condition while assigned to special troop service on May 10, 1943 enroute from Camp Buckley to Idia, California, will be reviewed at this hearing. . . .

After a hearing, which appears to have been conducted in a fair and impartial manner, the charges were sustained and a penalty imposed of suspension for thirty days, which was in fact limited to twenty-eight days. The claim is that the charges were unproved and that the action of the carrier was unjust, unreasonable and arbitrary. The claimant asks this Board to clear his record of the charge and that he be reimbursed for time lost.

We have carefully read the record and particularly the report of the hearing given the claimant. It is not necessary to summarize the evidence or review it here. It is sufficient to say that there is ample to sustain the charge. The penalty imposed was not unreasonable. It is true that the evidence is conflicting. It is not, however, the function of this Board to weigh evidence or pass on the credibility of witnesses, in order that we may substitute our judgment for that of the carrier. Awards 2498, 3125.

It was made clear at the hearing that the notice of review of the service record involving a previous incident was not to be regarded as a part of the charge and was not to be considered as relevant on the question of guilt. Consideration of a previous offense is, however, proper in determining what disciplinary action should be taken if the charge at issue should be sustained. Awards 430, 562, 1587, 1599, 2440, 2498.

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 action taken by the carrier in disciplining the employe was not unreasonable or unjust.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.