

Award No. 3753

Docket No. PM-3592

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of W. P. Barber 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 Houston, Texas.

Because The Pullman Company did, under date of June 18, 1946, discipline Porter Barber by giving him an actual suspension of ten (10) days on charges unproved; which action was unjust, unreasonable, and in abuse of the Company's discretion.

And further, for the record of Porter Barber to be cleared of the charges in this case and for him to be reimbursed for the ten days pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: The claim here in behalf of W. P. Barber, a porter, is that the Carrier on June 18, 1946, disciplined Porter by giving him a suspension for ten days on charges which were unproved "which action was unjust, unreasonable and in abuse of the Company's discretion." The claim asks that Barber's record be cleared of the charges and that he be reimbursed for the ten days lost.

The written charge against Barber was that on February 18, 1946, while on service on his car:

"You became involved in an altercation with Pullman Conductor R. C. Condit, Fort Worth District, who was deadheading and held space in your car, enroute Fort Worth, Texas."

Without going into detail as to the evidence, it is clear that late at night, while claimant's sleeping car was occupied by passengers, the claimant and the deadheading conductor became engaged in a heated and angry dispute in the smoking room of claimant's car. The dispute started over where the conductor's bag was to be kept. The dispute ended in a fight on the steps of the car.

The written charge could properly have been more specific but we have no doubt that claimant on receipt of the charge understood it.

An "altercation" means an angry dispute or argument. The claimant's fight with the conductor was serious enough that he and his witnesses distinctly remembered it.

From a careful consideration of all of the evidence we are inclined to believe that the conductor Condit started the actual fight on the steps of the car. It is not clear who started the altercation in the smoking room.

The Pullman Company cannot permit its employes to engage in angry arguments in its sleeping cars when such cars are occupied and especially after the occupants have retired for the night.

If the deadheading conductor refused to comply with complainant's request as to the baggage, the proper course for claimant was to promptly notify the conductor in charge.

If the deadheading conductor was responsible for starting the altercation in the car, the claimant was still not justified in taking part in it.

The passenger witness produced by the Organization for the claimant said that there was an argument in the smoking room, "somewhat heated, both parties being excited," between the claimant and the deadheading conductor.

This evidence in itself, regardless of the affair on the car steps, was enough to justify the Carrier in finding that claimant did engage in an altercation.

We cannot say that the penalty imposed was unreasonable.

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 Employes involved in this dispute are respectively carrier and employes, 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 of the Carrier in disciplining the claimant was not unjust, unreasonable nor an abuse of discretion by the Carrier.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1948.