

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and on behalf of Conductor H. A. Hecox, Seattle District, that he was unjustly discharged from service on April 10, 1945, and asks that he be reinstated to service as conductor with seniority rights unimpaired and with compensation for all time lost.

OPINION OF BOARD: Claimant is a Pullman Conductor who asserts he was unjustly discharged from service, and seeks reinstatement and restoration of rights and wages. He was accused of molesting a woman passenger, which he denied.

The evidence in the record is voluminous. Besides four statements of Claimant himself, there are thirty-four statements from thirty persons who were on the train. Much of this evidence is contradictory. But it presents a disputed issue of fact chiefly as to the identification of Claimant in connection with the charge.

Because of the seriousness of the charge and the character of the evidence we have considered the record at great length and find that there is substantial evidence which is sufficient to sustain Carrier's action in discharging Claimant.

The fact that the evidence in proof of a charge is contradicted does not concern us so long as there is sufficient probative evidence to establish the guilt of the person charged. This is true because we are not the judge of the credibility of the witnesses; that is for the Carrier.

A great number of Awards of this Division have consistently held that in a matter of discipline it is not a proper function of the Division to pass upon the credibility of witnesses or to weigh the evidence in order that we may substitute our judgment for that of the Carrier. Some of these Awards are: 2498, 2766, 2771, 2793, 2896, 3112, 3125, 3235, 3734.

Claimant had a fair hearing. Since the evidence of record is sufficient to sustain Carrier's action, it cannot be said that the discipline imposed by Carrier is unfair, unreasonable, or arbitrary. Such being the case we may not interfere with Carrier's action.

As to the charge that Carrier improperly delayed the hearing and in doing so it violated Rules 46 and 47, we find the record does not sustain the charge.

Finding no abuse by Carrier of its right to discharge Claimant under the circumstances, the claim must be denied.

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 25th day of March, 1948.