

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 in behalf of Conductor O. A. Kintz, Memphis District, that he should be restored to his former position as conductor in the Memphis District, with all rights unimpaired, and that he should be compensated for all time (earnings as Pullman Conductor) lost by reason of said discharge.

OPINION OF BOARD: Petitioner seeks the reinstatement of Pullman conductor Kintz with all rights unimpaired and compensation for time lost on the ground he was unjustly dismissed.

The conductor was charged with "attempting" to transport a woman passenger without collection of Pullman or railroad fare from Kansas City to Memphis.

When checked by the service inspector about an hour after leaving Kansas City the diagram of car 69 showed lower berth No. 9 was open but the inspector noted the space was occupied by a passenger. When he advised Kintz the space was occupied the latter stated he had tickets to cover but did not produce them. Just before the train reached Springfield, Missouri, the train conductor was asked about the railroad ticket of berth No. 9. He answered he had none. Then the train conductor demanded the ticket from Kintz who thereupon paid cash out of his own pocket for the ticket and for the Pullman ticket. There was evidence that Kintz admitted he was carrying the passenger without transportation because she was a woman friend of a Dining Car Steward who was deadheading from Kansas City to Springfield. It appears the passenger was introduced to Kintz at his receiving desk at the station gate and he escorted her to the train, carrying her grip, and gave her the berth in question. When the train left Springfield Kintz again paid cash for the passenger's fare to Hoxie, Arkansas, where she detrained.

It is claimed the charge was not proved. The charge was attempting to transport a passenger without collection of fare from Kansas City to Memphis, while the evidence shows the passenger detrained at Hoxie. However, we do not believe such variance between the evidence and the charge has in any way harmed Kintz or has denied him a fair trial. The gravamen of the charge is not the distance the passenger was transported free of charge, but the attempt to transport her without collection of fare.

Ordinarily an attempt to commit a forbidden act has three elements: (1) the intent to commit the forbidden act; (2) performance of some act toward the commission of the forbidden act; and (3) failure to consummate

the commission of the forbidden act. We find sufficient proof of the three elements. Kintz admitted he was taking care of the passenger without transportation as a favor to the Dining Car Steward; he failed to collect her transportation and did not himself account for it until nearing Springfield; and he was caught before the passenger reached her destination so he had to pay her transportation out of his own pocket.

Kintz was given a fair hearing at which he denied the charge and explained his act on the ground the passenger had been drinking and was asleep when he attempted to collect her fare and he could not arouse her. However, his own evidence shows she sat in the Drawing Room before she retired in lower 9 for an hour or more, and that Kintz made no attempt to collect her fare during that time.

Since the record shows sufficient evidence to support the charge we cannot say that Carrier's action in dismissing Kintz is arbitrary or unreasonable.

Consequently 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 7th day of June, 1948.