Award No. 4226
Docket No. PM-3685

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 A. A. Watts who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of Atlanta, Georgia.

Because The Pullman Company did, under date of January 29, 1947, take disciplinary action against A. A. Watts by assessing his record with a warning on charges unproved; which action was unjust, unreasonable, and in abuse of the Company's discretion.

And further, for the record of A. A. Watts to be cleared of the charge in this case and for the disciplinary action (a warning) to be expunged from his service record.

OPINION OF BOARD: The Claimant herein, Porter Watts, operating out of the Atlanta District, arrived in San Francisco deadhead with a group of other porters about 3:30 A. M., August 29, 1946, for the purpose of protecting service out of that point. The sign-out times at that station were 10:00 A. M. and 3:00 P. M.

By a letter dated November 22, 1946, the Carrier charged the Claimant with having failed to report for service at the 10:00 A. M. Porters' sign-out period on August 29, and that when he did report at the District Office that afternoon he was under the influence of intoxicating liquor. A hearing on that charge was conducted in the Office of the Assistant Superintendent at Atlanta, Georgia, on January 8, 1947. The Claimant was found guilty and a warning was entered on his record.

The claim here is that the Carrier failed to prove the charges and that its action in assessing his record with a warning was unjust, unreasonable and an abuse of discretion on the part of the Company and Claimant requests that this Board clear Claimant's record of the charge and that warning entry be expunged from his service record.

On the hearing the Carrier presented its entire case by written statements secured from various witnesses who were present at the time of the alleged offense by this porter. The Claimant in the hearing testified and also presented as a witness, Porter Reid of the Atlanta District, who was in San Francisco on August 29, 1946, for the same purpose as the Claimant.

The testimony as contained in the statements and as given by Porter Watts, the Claimant, and Porter Reid, is conflicting. We have said in many awards that discipliniary action taken by the Carrier, after a charge and a hearing, which complied with the rules of the agreement will not be set

aside by this Division unless it be shown that the action of the Carrier has been arbitrary, capricious or unreasonable.

We have also held that it is proper in such hearings to use written statements of witnesses as evidence. This would seem to be especially justified where, as here, the witnesses having personal knowledge of an occurrence are a great distance from the place where the hearing is held. We have also said that where such written statements are to be used as evidence the employe involved should be given an opportunity for investigation and questioning of the persons making the statements. This record discloses no attempt on the part of this Claimant to contact the witnesses who gave written statements and the record shows no objection, either by the Claimant or the representatives of the Organization, to the use of such written statements. We must, therefore, assume that the Claimant waived his right to interview these witnesses or to make an investigation concerning their statements. Award 3213.

We have also said, in many awards, that in reviewing such a hearing where there has been conflicting evidence we will not actually weigh the evidence in order to arrive at a different conclusion from the finding of the Carrier. This does not mean that we will not consider the evidence to determine if such evidence presents a reasonable basis for the finding. This should be done in each case in which we review disciplinary action based on a hearing. If we find that the Carrier was justified in the disciplinary action taken it does not mean that we disregard or ignore testimony tending to disprove the charges but only means that we have found that the testimony tending to support the charge furnishes a reasonable basis for the finding and decision of the Carrier.

When we consider the evidence in this case we find that Porters Watts and Reid were very much confused as to the time of the day of the occurrence here in question and that Porter Reid was confused as to the day on which the occurrence took place. As opposed to this testimony we have the positive statements of the Carrier's witnesses that Porter Watts, the Claimant, did not report for sign-out at 10:00 A. M. on August 29; and that when he did report in the afternoon of that day he had been drinking, so disqualifying him from sign-out at that time. The fact of the liquor being on his breath when he reported was testified to by Assistant Chief Clerk B. A. Perry and by Custodian J. Edwards.

The record fails to show positive proof that this Claimant had been notified that 10:00 A. M. was the regular sign-out time for the San Francisco District Office. However, we may assume that since the man had been a porter for the Carrier for about four years he would know that each District Office had regular sign-out times and, on arriving deadhead at any station to protect service out of that point, would inform himself as to what the sign-out times were.

The Claimant's only excuse for not reporting for service at 10:00 A. M. sign out time was that on his way to report he encountered another porter in need of assistance.

There was ample evidence to support a finding by the Carrier that this incident occurred long after the sign-out time had passed.

A consideration of the entire evidence in this case convinces us that there was ample evidence on which the finding of the Carrier was based and that the penalty assessed was not 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 Carrier did not violate the Agreement as alleged.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of December, 1948.