Award No. 4227
Docket No. PM-3968

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. S. James, who is now, and for some years 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 August 25, 1947, take disciplinary action against Porter James by giving him an actual suspension of five (5) days on charges unproved; which action was unjust, unreasonable, and in abuse of the Company's discretion.

And further, for the record of Porter James to be cleared of the charge and for him to be reimbursed for the five (5) days' pay lost as a result of this unjust decision.

OPINION OF BOARD: Porter W. S. James, of the Atlanta District, was charged with having failed to remain on duty with his car at Monroe, Virginia, on April 25, 1947; that as a result Train No. 34, to which his car was attached, departed from Monroe before he returned from his unathorized absence; and further that after being left at Monroe he violated safety regulations by boarding a moving train. This charge was made in a letter to the Claimant, Porter James, dated July 3, 1947. The hearing on the charge was held at Atlanta, Georgia, on August 12, 1947. As a result of the hearing Claimant was suspended from service for five days.

The claim here is that the Company failed to prove the charges at the hearing and that in giving him the suspension its action was unjust, unreasonable and an abuse of the Company's discretion. Claimant asks that his record be cleared of the charge and that he be reimbursed for the loss of pay for five days.

It is admitted that while Train No. 34, to which the Claimant's car was attached, was stopped at Monroe, Virginia, the Claimant left his car without leaving anyone else in charge and without securing the permission of the Pullman Conductor and that he then, by mistake, boarded Train No. 37 which had pulled into the station during his absence, which train was traveling in the opposite direction, and that before he discovered his mistake the train was moving too fast for him to leave it. That, as a consequence of the above, he was not on duty with his car for the remainder of its trip from Monroe, Virginia, to New York City.

In the hearing Claimant explained his leaving his car by testifying that a passenger asked him to send a collect telegram; that Claimant's Pullman car was on the rear end of the train; that he walked through the five other Pullman cars in the train, failed to find the Pullman conductor, left the

train to take the telegram to the telegraph office, was in the telegraph office for several minutes trying to send the telegram and finally left the telegram on the counter in the office telling the operator to send it collect.

It seems to be admitted that if the Claimant's story is true he was justified in leaving his car and the train to take the telegram to the telegraph office for his passenger. The applicable book of instructions expressly authorized porters to accept telegrams from passengers for delivery to the telegraph office.

The Company seeks to rebut the statement of the Claimant that he was absent from his train sending a telegram by the written statement of C. L. Orndorff, Mgr., addressed to the District Superintendent at Atlanta, Georgia, the entire statement being as follows:

> "No Western Union Messages filed from train No. 34 at this point (Monroe, Virginia) on April 25, 1947."

The Claimant had made a written statement to the District Superintendent, dated April 30, 1947, in which written statement he had attempted to excuse the incident by stating that the cause of his leaving he train was to send a telegram. In the hearing Mr. Dodds, the representative of the Company, stated that "an investigation was conducted by the Pullman Company through the Depot Ticket Agent, Mr. C. L. Orndorff of Monroe, Virginia, in connection with whether a telegram was filed from Train No. 34 on April 25, 1947." This statement by Mr. Dodds and the written statement by Mr. Orndorff cannot be considered as sufficient evidence on which the Company could base a finding that the Claimant had not attempted to send a telegram as he claimed. It is not known that Mr. Orndorff was present at the time. It is not shown what sort of an investigation he made, with whom he talked, or what records, if any, he examined. We are not shown by the record that there was anything about this particular collect telegram, which the Claimant states he left on the counter and told the operator to send, which would indicate that it was from Train No. 34.

If one ultimate fact may be proved in this manner, we see no reason why a Carrier might not have a representative privately investigate the entire charge and then submit his written opinion that the employe is guilty as charged.

The hearing required by the rules of the applicable agreement is for the purpose of developing the facts in the presence of the accused and the rules expressly provide that in such a hearing the accused shall have the right to "question all witnesses by giving testimony in the case." It is certainly a violation of this rule for the Carrier to cause one of its representatives to make an investigation in the absence of the accused, and then to seek to prove the charge by the bald statements of the investigator that he has found an essential fact to be true. Such procedure cannot be considered as being reasonable, as being just to the accused, or as being within the Agreement which the parties have executed.

The other part of the charge against this Claimant was that the Claimant violated safety regulations by boarding a moving train. The Company based this charge on the written statement of the Claimant made by letter dated April 30, 1947 that "after quite some delay, I came back seeing the train moving out, I got on it only to discover I was on the wrong one." In the hearing the Claimant denied that the train had actually started moving when he boarded it. Apparently contradictory statements should be reconciled where possible. On this question we have the above quoted written statement of the Claimant and then his oral statement as a witness at the hearing. It would certainly be reasonable to assume that in his written statement he could have intended to convey the impression that he saw the crew of the train signaling for the train to move out; and that the train was not actually in motion when he boarded it. The safety regulations set out in the hearing and quoted from the book of instructions were general and did not expressly forbid an employe from boarding a moving train.

In view of all of the above we are of the opinion that there was insufficient evidence on which the Company could base its finding that the Claimant was guilty of violating a safety regulation by boarding a moving train.

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 employe 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

The action of the Carrier in taking disciplinary action against the Claimant was an abuse by the Company of its discretion because the charge against the Claimant was not sustained by sufficient evidence.

AWARD

The Claim is sustained.

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.