

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 J. M. Ross who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of Philadelphia, Pennsylvania.

Because The Pullman Company did, under date of July 3, 1947, take disciplinary action against Porter Ross by giving him an actual suspension of one round trip (equivalent to four days actual suspension) on charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

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

**OPINION OF BOARD:** The Claim is that disciplinary action, suspension for four days, was unjustly taken against Claimant on unproved charges and a request that Claimant's record be cleared and that he be reimbursed for the pay lost.

The Company by a written statement to Claimant, dated May 3, 1947, charged that:

"1. You failed to answer the call bell in your car at an hour when passengers were rising to make their toilets, and

2. You acted in a threatening manner towards a passenger during a discussion of this matter."

The complaining passenger, Schrag, had left a call with Porter Ross for a call at 7 A.M. About 7:15 he awoke and being in an upper berth rang for the porter. He rang several times, became "exasperated," climbed down without a ladder or the assistance of the porter and then went into the wash room where he found the porter drinking coffee.

Schrag was not present at the hearing but submitted a written statement which was used as evidence. In his statement he said that "in an angered but not abusive tone" he remarked to the porter "did you not hear me ring the bell at least a dozen times?" He concluded the written statement by saying "The menacing manner in which this porter approached me is what I object to very much. He deserves a severe reprimand and it is my opinion that a person with his mad look and ill tempered attitude ought to be consigned either to the kitchen or in some other department where he will not have any contact with passengers."

He also stated that the Pullman Conductor "overheard what had taken place. The conductor is familiar with the situation." The written statement of the Conductor discloses that he only heard the final remark of the Porter which was "I am human" and that he was only familiar with the situation by having talked to Schrag and two other witnesses.

The written statement of the Conductor as to what Schrag and the other witnesses said is only hearsay as to the allegations of those witnesses. The Conductor did state that he had explained to Schrag that Porter Ross "had left the car for a short period to secure coffee and it was probably during this time that Ross was absent that he rang the bell without result and on reaching the smoking room Porter evidently just returning to car and was starting to drink the coffee and although it appeared that Porter had disregarded the call bell such was not the case."

The Conductor's statement also said that he had discussed the matter with Schrag and Ross at which time "Ross again asserted that Mr. Schrag had cursed him and that he had done nothing that would call for an apology; and that Schrag had then said 'I am not a cursing man and probably said 'damn'."

The Company introduced another written statement which it had caused its Service Inspector to prepare for the signature of another passenger, Truman Fowler, who said that he was in the wash room dressing when Porter Ross left the room and returned with coffee which he started to drink; that "as he returned a passenger followed him into men's room and complained that he had to get out of his upper without the berth ladder. This passenger was swearing using the words 'God damn it, What the Hell, etc.'; and that the porter said 'Don't talk to me like that, I am human too.'"

The statement of this passenger also said that as the Porter said this he arose, clenched his fists, and advanced towards the passenger in a menacing manner. Fowler's statement closed by saying "I travel constantly and have never seen such an exhibition given by a Pullman employe. This porter maintained a most arrogant, insolent attitude towards all passengers and it is my opinion that he should be discharged from your service."

The statement of another passenger, Myers, who was occupying a berth next to the men's room said that he found the service good and Porter Ross "attentive and performing his duties properly." He said that he was awakened by the bell and from time he was awakened he could hear loud talking and profanity; that the profanity came from the passenger, Schrag; that he, Myers, entered the men's room; that Schrag wanted to drop the argument "but another passenger in the men's room urged him not to"; that "In my opinion the porter was not at fault," and that in his opinion "porter was right and doing his best."

When all of these statements and the statement and evidence of Porter Ross are considered together it seems very clear that the admissions of passenger Schrag that he was "exasperated", talked in an "angered but not abusive tone" and was "not a cursing man and probably said 'damn'" were gross understatements of the facts. He had left a call for 7:00 A. M. He awoke shortly thereafter. He had not received his call, which was explained by the fact that the train was about an hour and a half late and the porters were instructed to make allowance for trains being late. He then rang for the porter and received no response because the porter was just then out of the car getting coffee. Schrag climbed down without assistance, went to the men's room and proceeded to make such a scene that the porter finally told him "Don't talk to me like that, I am human too." Schrag was willing to drop the entire matter if Porter Ross would apologize.

This statement of passenger Fowler, his urging Schrag not to drop the argument, his attitude and statements to the Pullman Service Inspector all show such intolerance and prejudice as to throw serious doubt on his statements as to the menacing attitude of Porter Ross.

As against the written and conflicting statements of these two men, Schrag, angry and abusive, and Fowler, prejudiced and intolerant, we have the statement of Myers, a disinterested passenger who was not in the argu-

ment, the clear and positive statement of Porter Ross who apparently had been serving faithfully in that position for more than 26 years, and the statement of the Pullman Conductor which, while reciting some of the statement of Schrag and Fowler, plainly indicated that he did not consider Porter Ross at fault.

The action of the Company in finding Porter Ross guilty of the two offenses charged on the statements of Schrag and Fowler cannot be sustained. The written statements of these two men cannot be considered as sufficient evidence to sustain the finding of the Company.

The Claimant's failure to answer the call bell when Schrag rang is admittedly explained by the brief absence of Ross to get coffee. The accusation that Ross acted in a threatening manner towards Schrag was not shown by sufficient evidence. Porters should not be required to smile while receiving unjustifiable abuse from passengers. As correctly said by Porter Ross, they too "are human."

**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

The decision of the Company that Claimant was guilty as charged was not sustained by sufficient evidence and the disciplinary action taken by the Company was therefore unjust.

#### 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.