Award No. 4251
Docket No. PM-4154

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of E. W. Long, who was formerly employed by The Pullman Company as a porter operating out of the New York Central District of New York, New York.

Because The Pullman Company did, under date of July 23, 1947, discharge Mr. E. W. Long from his position as a porter in the above mentioned district on charges unproved; which action was unjust, unreasonable, arbitrary and in abuse of the Company's discretion.

And further, because the Company acted unjustly and in abuse of its discretion because the employe was convicted and discharged on unidentified evidence of no probative value; said documentary evidence on which the employe was convicted being identified **only** by an initial, and the identity of the individual giving such evidence being known only to the Carrier.

And further, for Mr. Long to be returned to his former position as a porter in the New York Central District with seniority and vacation rights unimpaired, and with pay for all time lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: The Claimant was discharged from service, after a hearing, for having acted improperly toward a lady passenger occupying a berth in a sleeping car which he guarded. It is asserted on behalf of the Claimant that the action of the Carrier was unjust, unreasonable, arbitrary and in abuse of discretion.

The claim is predicated on the fact that the Carrier's finding necessarily rests upon photostatic copies of statements which purport to have been made by the complaining passenger and her sister and which were introduced in evidence by the Carrier at the hearing to support the charge. When these copies were offered, the names of the makers had been blocked out so that they were identified merely as "Miss G" and "Mrs. B".

Immediately after the introduction of the photostatic copies Claimant's representative protested against these being placed in the record on the ground that the deletion of the names of the makers prevented a fair and impartial hearing. The Carrier's representative thereupon cited a number of awards to support his contention that the statements, as offered, constituted proper evidence. The representative of the Claimant then asked for a postponement of the hearing until he would be "in possession of sufficient information to answer those statements placed in the record and analyze these awards." At 10:15 A. M. the hearing was recessed until 1:00 P. M., of the

same day, after which it was resumed and concluded without further protest or objection on behalf of the Claimant. In the further course of the hearing the Claimant was interrogated by his representative concerning the recitals contained in the complaining passenger's statement, and the record further discloses that said representative, himself, placed in evidence the tenth paragraph of said statement to support the Claimant's defense.

The evidence, including the statements of the two women, fairly supports the Carrier's finding, and we see no reason for disturbing it. While this Board has repeatedly held that an employe, under the circumstances of a case like this, is entitled to the names and addresses of the witnesses whose statements are offered against him, on proper and timely demand therefor, this protection can, however, be waived. Here, the Claimant asked merely for a postponement of the hearing for time sufficient to enable him to answer the statements, and he made no objection to the short suspension granted. Thereafter, he participated in the hearing without further objection and gave his own version of the facts recited in the statements. As already pointed out, he even offered and relied upon a part of one of the statements as evidence in support of his defense. While this Board will protect the substantial right of an employe to a fair and impartial trial, it should be kept in mind that this does not require us to apply the technical rules applicable to judicial proceedings. We hold, therefore, that the Claimant effectually waived the irregularities of which he here complains.

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 record discloses no ground for disturbing the action of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of January, 1949.