

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of C. P. Woods who was formerly employed by The Pullman Company as a porter operating out of the Chicago Western District.

Because the Pullman Company did, under date of August 31, 1948, discharge Mr. Woods from his position as a porter with The Pullman Company 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 C. P. Woods did not have a fair and impartial hearing as is provided for under the rules of the agreement covering this class of employees of which Mr. Woods was a part.

And further, for C. P. Woods to be returned to his position as a porter for The Pullman Company in the Chicago Western District with seniority rights and vacation rights unimpaired, and with pay for all time lost as a result of his dismissal from the service.

OPINION OF BOARD: We are faced here with what we may safely say is the most difficult type of discipline case that comes to this Division. A Pullman porter has been dismissed from the service because a woman passenger, Mrs. Emma Graybill, complained to the train conductor, the Pullman conductor and to a Pullman service supervisor, who happened to be on the train, that the porter had made improper advances to her in the women's dressing room in the car in which she occupied a lower berth and of which he was in charge as porter.

As a result of the complaint and her expressed fear of further molestation, the Pullman conductor had Mrs. Graybill moved from her lower berth space to a drawing room in another car where she could lock the door. In addition to the verbal complaint, which was discussed with her again the next morning by the Pullman conductor and the supervisor, Mrs. Graybill, after a visit to her home from another representative of the Pullman Company a few days later, set forth her complaint in a letter to the Pullman Company. This letter dated April 15, 1948, a few days after the alleged incident, was introduced as evidence at the subsequent trial.

The Organization expressed vigorous objection to its introduction on the grounds that the address had been deleted. Objection was raised, also, to the introduction of a letter written by the woman's fellow passenger, Mrs. Hine-Alexander, to whose bedroom in another car Mrs. Graybill had gone as a

refuge immediately after the alleged incident and before she had talked to the conductors. The objection went to its "hearsay" character. It was Mrs. Hine-Alexander who sent for the train conductor. She was present during Mrs. Graybill's conversation with him and also during her conversations with the Pullman conductor and the service supervisor. Reports made by Pullman Conductor Meyers and Service Supervisor Sanderson were introduced at the trial and Conductor Meyers testified and was cross-examined. Equally strenuous objection was made at the trial to the failure of the train officials to inform Porter Woods of the complaint before Mrs. Graybill left the train the next morning. We are aware of Awards Nos. 891, 2637, 2793, cited in behalf of petitioner. We think the situation here is not apposite. In Award No. 2945, also cited in behalf of petitioner, we find many similar features, but there the claim was denied.

We do not think Mrs. Graybill's address was withheld arbitrarily in the sense that the Company acted from caprice or in a high-handed manner. There is no showing here that Mrs. Graybill had animus toward Porter Woods, or that she sought, by her complaint, to blackmail him or the Company or secure notoriety or material gain of any sort. Except for her request in her letter of April 15, 1948, that "I feel your Company should take some drastic action with this employee to prevent a recurrence with some other lady passenger", there is no showing in the record that she sought anything but the customary conveniences of Pullman travel and, after the incident she recites, freedom from further molestation.

All of her statements appear to have been made reluctantly. Her request for asperins, recited by Porter Woods, represents only an ordinary request for service in a Pullman car. Her statement about the length of her absence from home and the likelihood of her being unable to sleep, however it was meant and however careless it may seem in retrospect to have been, in the reported form, was directed to a woman passenger, not to Porter Woods.

He injected himself in to the conversation with a comment which, if not erotic in its implications, was wholly out of keeping with his duty and his responsibility to the Company and to the passenger. This was followed closely, Mrs. Graybill later reported to the conductor, by improper proposals, recited in detail in the record, in the women's dressing room when, upon finding the inner door to the toilet locked, she asked him to unlock it. Instead of leaving the room she says he remained, closed the door and struggled with her. Only two people, she and Porter Woods, know precisely what happened. He denies the charge; he only admits that he injected himself into the conversation, in jest, and that he did go into the women's dressing room to unlock the inner door while she was present.

In Award No. 4207, another case of this general character, we said, "Cases of this type are notoriously difficult of proof by extraneous evidence . . . there is no burden upon the Carrier in this matter as there might be in some criminal cases of like ilk where the guilt of the accused must be proven beyond a reasonable doubt and some corroborative testimony other than that of the complainant is required . . . All that is required is that there be real substantial evidence to sustain the charge."

If we had any reason to believe the charges were trumped up or that the petitioner was being "framed" or that prejudice entered into any phase of the proceedings from the moment the complaint was made until the decision was reached, we would not hesitate to order restoration or to remand the case for another hearing. The record before us does not reveal motives of such character. It lacks only the address of the complainant, Mrs. Graybill. Under all of the circumstances we think there was ample warrant for withholding it. With respect to the failure of the Pullman conductor or the service supervisor to give Porter Woods more details of the complaint we think they might have done this and been generally more forthright with him without requiring Mrs. Graybill who seems to have exhibited such clear signs of fright, to face him. Our function, however, is to pass judgment on the evidence rather than to issue operating instructions.

It has been held repeatedly by this Division that if there is any substantial evidence to support the charges, the findings based on this evidence will not be disturbed. Award No. 2297.

On the whole record we conclude that the evidence discloses no grounds for disturbing the action of the Company.

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 Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 9th day of December, 1949.