

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM
THE PULLMAN COMPANY**

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and on behalf of Conductor H. A. Austin of the St. Louis District, that:

1. Under date of April 2, 1949, The Pullman Company did discharge Conductor Austin from the service on charges unproved, and further that in discharging Conductor Austin The Pullman Company acted unjustly and in abuse of its discretion and in violation of Rule 49 of the Agreement between The Pullman Company and its Conductors, and

2. We now ask that H. A. Austin be restored to his former position as conductor in the St. Louis District, with all rights unimpaired and that he shall be paid for all time lost as a conductor by reason of said discharge.

OPINION OF BOARD: The claim is that the carrier discharged H. A. Austin without granting him a fair and impartial trial and without proof of the charges in violation of Rule 49. The carrier also is alleged to have improperly relied upon hearsay evidence. The principal charge, with reference to the incident, is that the claimant violated the privacy of a woman passenger by invading her berth after she had retired and made improper remarks to her. The evidence substantiates the charges made.

The claimant was the only Pullman Conductor on Train No. 9. Janice Rittenbaum, who occupied lower 5 in car 93 stated that the claimant lifted her ticket. Her description of the claimant appears to be fully substantiated by the description contained in the employment records of the carrier.

The statements of Ethel L. Eckert and Porter Murray do corroborate Miss Rittenbaum's statement that she called the porter for the purpose of keeping the conductor away from her berth. The claimant was not discharged for invading the berth of Miss Eckert. Miss Eckert's statement, however, is important to the extent that it corroborates the statement of Janice Rittenbaum. The claimant was afforded a fair and impartial hearing. At the hearing of May 10, 1949, the carrier introduced the statements of all witnesses together with their names and addresses. The claimant was given an opportunity to have the hearing adjourned for further investigation but waived this right. Although the carrier has no right to arbitrarily withhold from the claimant the names and addresses of persons whose written statements are used against him, he was afforded an opportunity to have the hearing adjourned so that he could communicate with the witnesses and make his own investigation as to the truth of the statements. Award 2793.

It is significant that although the claimant stated that he slept in car 94, he could not identify the berth that he occupied and his location was not listed

on porter's call cards. It was agreed that the conductor should have advised a porter as to his accommodations in order that he might be called in an emergency. There is no evidence that the carrier acted arbitrarily or without just cause in discharging the claimant.

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

That the Agreement was not violated.

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 25th day of May, 1950.