

Award No. 5011  
Docket No. PM-4927

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS  
THE PULLMAN COMPANY

STATEMENT OF CLAIM: \* \* \* \* for and in behalf of Harvey McNeal, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Chicago Northern District.

Because The Pullman Company did, under date of July 21, 1949, take disciplinary action against Harvey McNeal by assessing his record with a "warning" on charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the disciplinary action taken against Harvey McNeal (a warning) to be removed from his service record and for his record to be cleared of said charge.

OPINION OF BOARD: This is a discipline case in which Porter, Harvey McNeal, was charged with being arbitrary and belligerent in his actions toward the Pullman Conductor in charge of the car on which McNeal was assigned as an extra and with having committed an assault upon the Conductor while the latter was endeavoring to instruct him on his prescribed duties.

After a hearing on the charge McNeal was notified it was the Carrier's decision that his record be assessed with a warning and that a notation to that effect had been placed on his service record card.

The facts are in dispute. However, nothing would be accomplished by detailing the evidence adduced during the progress of a prolonged hearing. It suffices to say that while the record shows a categorical denial on the part of McNeal of any and all of the acts of misconduct with which he was charged, it also discloses unequivocal testimony on the part of the Pullman Conductor which, if believed, would sustain the charges and warrant the discipline imposed. There was no eye witness to the assault. But that is not all. The Train Conductor stated that after being unable to locate the Porter in the car he and the Pullman Conductor made a search for him and found him asleep in Room "A" of the car. He further stated that when the Pullman Conductor advised the Porter he had no business being in that room in the first place, to say nothing of being there asleep with the door shut so that he could not hear requests from passengers for service, the latter became quite angry, telling the Pullman Conductor he would stay in the room and keep the door shut if he desired to do so. These statements corroborated the Pullman Conductor's version of what took place at the time in question and must be regarded as competent evidence of a

belligerent attitude on the part of the Porter. Moreover, since the Train Conductor's statements were also flatly denied by the Porter, they were entitled to be considered by the Carrier in weighing the conflicting statements made by the parties to the alleged assault.

Under the rule, to which this Division of the Board is committed (see Awards Nos. 2633, 2696, 2767, 4068, 4919) that it will not weigh the evidence or substitute its judgment for that of the Carrier in discipline matters unless there is clear evidence of an abuse of discretion by the Carrier, we cannot say the charges were unproved. Neither would we be warranted in holding the discipline imposed was so unjust, unreasonable or arbitrary as to constitute abuse of discretion. It follows the Carrier's action in this case must be upheld.

**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 record fails to disclose sufficient cause for disturbing the disciplinary 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 10th day of August, 1950.