

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 R. N. Johnson, who is now employed by The Pullman Company as a porter operating out of the District of Washington, D. C.

Because The Pullman Company did, under date of September 21, 1949, take disciplinary action against Mr. Johnson and give him an actual suspension of 15 days on charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Johnson to be cleared of the charges made against him, and for him to be compensated for the 15 days' pay lost as a result of this unjust and reasonable action.

OPINION OF BOARD: Porter, R. N. Johnson, was charged by the company with having the odor of intoxicants on his breath and with being defiant and argumentative toward his Pullman conductor while engaged in the performance of his regularly assigned duties on Car 108, Train 173, leaving Boston June 14, 1949, arriving Washington June 15, 1949. Approximately one month later he was notified he would be granted a hearing on such charge on July 21st, 1949. At the request of his representative the hearing was postponed until September 7, 1949. On that date all interested parties and their representatives being present evidence was adduced for and on behalf of both the company and the claimant. Thereafter and on September 21st following the claimant was notified the evidence adduced at the hearing warranted the assessment of disciplinary action and that he was suspended from the company's service for a period of 15 days, effective September 23, 1949, and expiring October 8, 1949.

Upon careful examination of the ex parte submissions of the respective parties it immediately becomes apparent the issues in this case are comparatively simple. The claimant states its position is that the charges against Porter Johnson were not proved at the hearing while the company insists that they were.

Turning to the record we find statements, offered and received as evidence at the hearing, without objection, from the Pullman Conductor in charge of the car to which Porter Johnson was assigned and from a Traveling Porter Instructor, who was on the train the night in question, to the effect that about one hour after the train left Boston and at or near Providence each of such persons, after observing unusual conduct on the part of the Porter, detected the odor of intoxicating liquor upon his breath. To refute this evidence we find a statement by A. T. Mathews, an attendant on the Federal Express,

that he was with Porter Johnson all of June 14th until train 173 left Boston, during which time the latter drank no intoxicating liquor of any kind, a statement by J. F. Sexton, Night Agent in the south station at Boston, to the effect that before the train left Boston and while he was passing through Car 108 he spoke to Johnson and observed nothing about his speech or conduct to indicate he had been imbibing liquor, and Porter Johnson's own outright denial that he drank any intoxicating liquor whatsoever on June 14th or that he had the odor of intoxicants on his breath on the evening of that day.

Applying the established rule (See Awards 2633, 2696, 2767, 4068, 4919, 5011) that in discipline cases this Division of the Board will not weigh the evidence or resolve conflicts therein we cannot say the company failed to prove the charge that Porter Johnson had the odor of intoxicants on his breath on the night in question in violation of the company rule, of which he admitted he was fully cognizant, prohibiting the use of intoxicants by its employees.

There is no merit in the claimant's suggestion that testimony of the Pullman Conductor and the Traveling Porter Instructor to the effect they detected the odor of intoxicants on the Porter's breath, even if believed, was no evidence of the fact he had been indulging in the use of intoxicating liquors. The courts as well as this Division, (See Award 2769), hold to the contrary.

Nor is there sound ground the company was guilty of abuse of discretion by reason of having arbitrarily rejected the great weight of the evidence. The statements of the Attendant and the Night Agent did not preclude the possibility of Johnson having indulged in intoxicants between the time they last saw him and the time the other witnesses detected the odor of liquor on his breath. Moreover, the testimony of the Night Agent was negative in character and for that reason of little probative value.

Even though there is much in the record to uphold it our conclusion the first portion of the charge made by the Company against Porter Johnson is sustained by the evidence makes it unnecessary to labor the portion charging him with having been defiant and argumentative toward his Pullman Conductor. The use of intoxicating liquor by a Pullman Porter while on duty is not to be condoned and we are not disposed to hold that a suspension from service for a period of 15 days, once it is established, is unjust, unreasonable or arbitrary.

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 warrants the disciplinary action imposed by the company.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of September, 1950.