Award No. 5032
Docket No. PM-5045

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of E. Ward, 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 September 9, 1949, take disciplinary action against Porter Ward in that it gave him an actual suspension of 10 days upon charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Ward to be cleared of the charge in this case, and for him to be reimbursed for the 10 days' pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: On June 24, 1949, about 6:25 P.M. at a time when Porter Ward was assigned to Pullman Car 1051, C & NW Train 105, scheduled to leave Chicago at 6:30 P.M., Night Agent Billburg, discovered three full cans of Blatz Beer in the water cooler locker of such car which he removed and turned over to Mr. Bailey, Assistant Superintendent of the involved district. Thereafter, and on August 15, 1949, Ward was notified he had been charged with having violated company regulations in transporting intoxicating liquors, identified as several cans of beer, in the water cooler locker of his car, and would be given a hearing on such charge on August 24th. Upon request of his representatives the hearing was postponed until August 26th, on which date all parties were present and adduced evidence in support of their respective positions.

The all decisive issue at the hearing was whether the beer belonged to Porter Ward or had been placed there by someone else without his knowledge or consent. In support of its position on this point the company, without objection on the part of the claimant, produced and relied on statements from Foreman Welt and Night Agent Billburg. In substance the former stated that in the performance of his duties he had inspected the car in question, including the water cooler, and that there was no beer on such cooler when he inspected the car shortly before it left the railroad yards. Summarized, and also limited to the point in question, Billburg's statement was to the effect he found three cans of Blatz beer in the water cooler locker at the hour and on the day mentioned in the first paragraph of this opinion, that he immediately contacted Porter Ward who admitted the beer belonged to him, and that he then removed it and delivered to Assistant Supt. Bailey.

Porter Ward's testimony consisted of an emphatic denial that he owned the beer or that he had made any admissions to Billburg of any character as to its ownership. However, during the course of his examination as a

witness he admitted he had found the beer in the locker ten minutes before backing into the station and while the car was still in the yards but had not reported it to anyone or removed it himself. He also admitted he was fully aware of the company's rule prohibiting the use or transportation of intoxicants or intoxicating liquors by porters in a Pullman car and providing that violations thereof subjected them to dismissal from service. He likewise conceded he had been interviewed by Bailey, the Assistant Supt., following the incident. When asked if at that interview he had not admitted he had told Billburg the three cans of beer belonged to him he failed, if in fact he did not actually refuse, to answer the question. This, we may add, although it constituted no proof of any admission to Bailey, was highly indicative of the attitude of the claimant and entitled to some weight in determining whether his story or that of the other witnesses was to be believed.

Claimant insists the foregoing facts and circumstances do not sustain the charges and then argues that even if they do the discipline imposed by the company, namely, ten days suspension from service, or one round trip, was so severe as to constitute abuse of discretion. We are unable to agree. Our function in discipline cases is not to substitute our judgment for the company or decide the matter in accord with what we might or might not have done had it been ours to determine but to pass upon the question whether, without weighing it, there is some substantial evidence to sustain a finding of guilty. Once that question is decided in the affirmative the penalty imposed for the violation is a matter which rests in the sound discretion of the Company and we are not warranted in disturbing it unless we can say it clearly appears from the record that its action with respect thereto was so unjust, unreasonable or arbitrary as to constitute an abuse of that discretion. A careful review of the record in the instant case discloses ample evidence to sustain the Compyan's finding the three cans of beer belonged to the claimant, that they had been placed in the water cooler locker by him, and that they had at least been transported from the yards to the station. Doubtless they would have been transported further if they had not been discovered by Billburg. Under such conditions we cannot say that the company's action in suspending Porter Ward from its service for a period of ten days was arbitrary, unjust or unreasonable.

Other objections advanced by the claimant, more technical in nature and having little to do with the merits, have been examined, considered and rejected for the reason they are either inapplicable under the existing factual situation or so inconsequential they do not warrant a sustaining award. It follows the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively carrier and employe 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 adequate grounds for disturbing the company's disciplinary action.

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.