

Award No. 5569

Docket No. PC-5526

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, 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 in behalf of Conductor W. J. Voelsch of the El Paso, Texas District, that:

1. Because The Pullman Company did under date of July 9, 1950, suspend Conductor Voelsch from service for fifteen days, commencing on July 9, and terminating on July 23, 1950, on charges unproven, and further because of suspending Conductor Voelsch from service, 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.

2. We now ask that Conductor Voelsch be credited and paid for this lost time, and his record be cleared of the charges.

OPINION OF BOARD: Claimant, a Pullman Conductor, was disciplined as a result of an incident occurring on May 11, 1950. He was suspended for 15 days because of his alleged failure on that date to give proper advance notice to his passengers that Train No. 7 was running late and failure to make arrangements with passengers to protect their space on connecting trains at El Paso, and further because he was improperly uniformed in fancy high-heeled Western boots in which his uniform trousers were allegedly tucked.

The record reveals the Claimant and a passenger, Mr. Hugh Cross, a member of the Interstate Commerce Commission, had a discussion on the train concerning the prospect of No. 7 missing connections at El Paso and what to do about reservations for continuance of Mr. Cross's trip beyond El Paso. It is a reasonable conclusion from Mr. Cross's description of that discussion as well as from the Claimant's that it was more or less heated. In any event, when it was found upon arrival in El Paso that connections would not be made, Mr. Cross spoke to Mr. R. W. Corley, District Superintendent of the Carrier at El Paso, who made arrangements for Mr. Cross's continued passage. At the same time Mr. Cross gave Mr. Corley all of the facts in connection with Claimant's conduct in this matter and was assured by Mr. Corley that he would investigate and see that proper action was taken. The matter was investigated by a Service Supervisor who reported to Mr. Corley on May 12, 1950. In addition, Mr. Corley received a statement from the Claimant on May 20, 1950, giving his version of the incident. On May 25, 1950, Mr. Corley wrote to Mr. Cross advising him that he had handled the matter very thoroughly with the Claimant and that he believed that the manner in which the matter had been handled

would have the desired result in the future. Thereafter, Mr. Cross, Mr. Hood (President of the American Short Line Railroad Association) and Mr. Faricy (President of the Association of American Railroads) met on the occasion of a gathering of railroad people. At that time, this incident was brought up in conversation. Mr. Faricy wrote Mr. Harding, President of the Pullman Company, on June 6, 1950, relative to that conversation. Mr. Harding wrote to Mr. Cross on June 8, 1950, inquiring about the incident and Mr. Cross replied to Mr. Harding on June 12, 1950. On June 19, 1950, Mr. Corley received a further statement about the incident from the claimant in reply to the statements contained in Mr. Cross's letter. Under date of July 7, 1950, Claimant was notified of the 15 day suspension.

We have taken pains to list chronologically the pertinent dates of the various incidents eventually leading up to the assessment of discipline against Claimant. They are important because they reveal that there has been a duplicate handling of the complaint of Mr. Cross with respect to the Claimant's conduct on May 11, 1950.

It is obvious from the record that when Mr. Corley wrote to Mr. Cross on May 25, 1950, he was in full possession of all of the facts in the case. That is evidenced by these factors—(1) Mr. Cross stated unequivocally in his letter of June 12, 1950, to Mr. Harding that he gave Mr. Corley all of the facts in the case; (2) Mr. Corley had a report from the Service Supervisor dated May 12 and (3) Mr. Corley had a statement from the Claimant concerning the incident. Mr. Corley's letter of May 25, 1950, to Mr. Cross had a note of finality in it, indicating that he considered the handling which he had with the Claimant prior to that letter as sufficient to close the incident. It is apparent that it was revived by the meeting of Mr. Hood, Mr. Faricy and Mr. Cross and Mr. Faricy's letter to Mr. Harding. It is clear that no further or different facts were developed which would put a different light on the Claimant's alleged dereliction after Mr. Harding's receipt of that letter. In other words, Mr. Corley had no more before him on July 7, 1950, than he did on May 25, 1950, except the knowledge that Mr. Harding, Mr. Faricy and Mr. Hood knew about the occurrence of May 11, 1950, on Train No. 7. The assessment of discipline of the nature here involved, when in the first instance it apparently was not deemed warranted, prior to the exchange of correspondence mentioned in paragraph 2 of this Opinion, in our opinion constitutes an abuse of managerial discretion.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of November, 1951.