

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of M. W. Irvin, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of St. Louis, Missouri.

Because The Pullman Company did, under date of June 27, 1951, take disciplinary action against Porter Irvin by assessing his record with a warning, which action was taken on charges unproved and was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Irvin to be cleared of the charge in this case, and for disciplinary action (a warning) to be expunged from his service record.

OPINION OF BOARD: The claimant, M. W. Irvin, a Pullman porter, seeks to have cleared a "warning" assessed against his record based on two separate but related specifications. One charged that he made improper remarks to a Union Pacific R.R. dining car inspector who was traveling on the train and who had procured from the Conductor at Ogden, Utah an assignment of a roomette on the car which Irvin was serving as a porter. The other charged that he was argumentative with the Pullman Conductor with regard to questioning in relation to the incident of the dining car inspector and with regard to the assignment of space to Irvin for occupancy during his rest period.

Factually at Ogden the inspector proceeded to the assigned roomette where he found a coat and bag later found to belong to Irvin, whereupon he concluded that the roomette was already occupied. He reported the fact to Irvin. Irvin stated that they were his. Irvin said that he told the inspector simply that he would remove them. The inspector's version of the response and his own reaction thereto which were contained in a letter were: "He informed me in a rather sarcastic tone that they belonged to him and that he had to have a place to sleep. I didn't say anything and continued on to dinner." There was no other or further interchange between the two.

The incident was reported to the Conductor. The Conductor accosted the porter, apparently after movement of the train started. In the conversation or conversations which ensued the Conductor told the porter that his bed was at the other end of the car. According to the Conductor the porter said that would not sleep in the bed at the other end of the car; that the Brotherhood said that porters did not have to do so. This the porter denied. The Conductor then assigned the porter to a berth in another car and changed the call card accordingly.

This conversation took place opposite a roomette occupied by a woman. She protested the removal of the porter from the car for reasons which need not be set out herein. On her protest the porter was assigned to the roomette which had been at first assigned to the inspector, who had been reassigned to another car.

In keeping with the repeated holdings of this Division that in disciplinary cases the finding of the Carrier must be sustained by substantial evidence of probative value it is not thought that the finding here is so supported.

Nothing offensive is found in the words addressed by the porter to the inspector. It is true as everyone knows from common experience and observation that tones and inflections of voice may often be more offensive and obnoxious than the words employed at the time. It conceivably may be that such was the case in this instance, but we cannot think that the mere statement quoted herein from a letter, which is all the proof found in the record, is sufficient as proof of an inoffensive statement offensively made.

As to the other charge under the precedents it must be said that there is evidence that the porter declined to occupy the sleeping place assigned to him. He gave his reason. This together with documentary evidence adduced by the Carrier is convincing that space for porters such as was involved had been a subject of controversy between the Brotherhood and the Pullman Company.

If one feels himself unjustly treated and especially in a matter which is a subject of open controversy, it appears that the most natural thing to do at the time is to register a protest. Of course in railroad operation if it goes beyond protest and adversely affects the relations of the Carrier with the traveling public, or impedes or interferes with service or amounts to insubordination it goes too far and may not be tolerated. Under such circumstances the employe would be subject to discipline even though it should ultimately be found that his position was correct. His recourse would be a resort to appropriate channels and procedures for redress.

There was evidence of protest and of an atmosphere of unpleasantness but no evidence sufficiently substantial to sustain the charge.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The claim has been sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of May, 1952.