

Award No. 5883

Docket No. PM-5923

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of O. Smith, who is now, and for some time past has been, employed by The Pullman Company as an attendant operating out of the Chicago District Commissary.

Because The Pullman Company did, under date of August 22, 1951, render a decision in which it penalized Attendant Smith by giving him an actual suspension from duty of one (1) round trip in his assignment on Line 3218, which is equivalent to nine (9) days; said penalty having been exacted on charges unproved, which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Attendant Smith to be cleared of the charge in the instant case, and for him to be reimbursed for the one (1) round trip or nine (9) days pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: The principles guiding this Board in its consideration of the suspension discipline imposed by the Carrier on Porter Smith for his failure to prepare the breakfast of eggs requested by the passenger through Porter Armstrong are those set forth in numerous earlier Awards by this Board, most recently in Award No. 5881. It may be that the car and equipment assigned to Smith were not in standard condition or in a condition comparable to those to which he had been accustomed. But the uncontroverted testimony of Pullman Conductor Leitermann, Porter Armstrong, and Busboy McDonald indicate that equipment for preparing the eggs was available; Porter Smith had time to get the equipment into suitable shape; Porter Smith refused an offer of help from Busboy McDonald; and Smith refused to obey orders. In the light of these circumstances we do not believe that the Organization has been able to establish that the Carrier's disciplinary action was unfair or unreasonably harsh or an abuse of its managerial discretion. The Organization apparently did not choose to make its own examination of these persons on whose testimony the Carrier based its decision. In the absence of direct and cross-examination of all persons involved we are, as usual, left with opposing, contradictory statements, the Organization's relying almost wholly on the testimony of the accused.

We think that the Carrier's discipline of Smith must be allowed to stand.

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 Carrier's discipline of Porter Smith should be permitted to stand.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 23rd day of July, 1952.