

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper—Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM
THE PULLMAN COMPANY

STATEMENT OF CLAIM: Claim of the Order of Railway Conductors, Pullman System for and in behalf of Mr. R. M. Sheppard that:

1. On July 10, 1951, Mr. R. M. Sheppard, then employed as a conductor in the Kansas City District, was discharged, which action by the Company was unwarranted and arbitrary.
2. Mr. R. M. Sheppard be restored to service with all rights, including vacation rights, and paid for all time lost.

OPINION OF BOARD: This is a discipline case.

Claimant R. M. Sheppard was a regularly assigned Pullman Conductor on Line 4022, a loop trip, Kansas City—Chicago—Fort Worth—Kansas City, on March 23-24, 1951.

Mrs. E. L. Henderson of Detroit, Michigan, had received notice of a death in her family at Oklahoma City. She purchased tickets to Oklahoma City with Pullman accommodations out of Chicago on Santa Fe Train 15. Before her arrival in Chicago, the space reserved for her was sold because the ticket had not been picked up by the deadline. There was no other space available for Mrs. Henderson at the time of departure of Santa Fe Train 15. The train departed from Chicago at 6:00 P. M. Shortly thereafter a drawing room was offered Mrs. Henderson which she declined. After leaving Streator at approximately 7:30 P. M. Roomette 7 in Car 158 had not been claimed. Sheppard contacted the chair car attendant and told him he was offering this roomette to Mrs. Henderson. She accepted and gave to the Claimant a twenty dollar bill in payment of the Pullman fare of \$11.56. Sheppard was short 15c in his change and informed the lady he would return the 15c to her. When he obtained the 15c change Mrs. Henderson was asleep. Next morning when going to breakfast she reminded the Claimant of her 15c; he again didn't have it but did obtain it, placed it on her luggage where she found it.

Prior to leaving on this assignment, the Claimant discussed with Mrs. Sheppard whether or not he should work due to the fact she was about to have a baby. They decided he should go but he made arrangements to be relieved on his return to Kansas City if his wife called. After completing the loop trip and when Claimant returned to his home at 2 A. M. his wife was waiting at the door for him to take her to the hospital.

Under date of March 24 the Claimant made out a report of the incident with Mrs. Henderson about her space being sold and the 15c change. This reached the Kansas City District Superintendent on April 5th.

It is undisputed that when Claimant went to Mrs. Henderson in the chair car he did not have with him his cash receipts and never did give a cash receipt to her, nor did he properly list the transaction on his Form "A" diagram, nor did he account to the Carrier for the \$11.56.

After proper notification to the Claimant and hearing Sheppard was found guilty of the charges that he failed to tender Mrs. Henderson a cash fare check; failed to enter the transaction on Form "A" diagram; and failed to deposit with the Company the sum of \$11.56.

Discipline was assessed and Claimant was dismissed from service effective July 10, 1951.

Claimant contends that under all the facts and circumstances the punishment was unwarranted and arbitrary.

The facts in this case are not in dispute. The evidence was ample and of probative value to support the charges. Discipline being in order we must then review the discipline assessed to see whether or not it was unreasonable, arbitrary or capricious.

As was said in Award 5835:

"Unless and until therefore the parties by their Agreements or by some other positive means establish measures or standards for the imposition of discipline it does not appear proper to deny the Adjustment Board power to examine into the character and extent of discipline imposed on the property, and if it be deemed improper to adjust it. To deny the Board the right of examination in this respect would afford the opportunity for the abuses which so often flow from uncontrolled and unchecked power.

"In a case where the right of the Carrier to impose discipline has been demonstrated, as here, the discipline imposed should not be brushed aside or modified without good and sufficient reason. All of the facts and circumstances should be weighed carefully before any such step is taken. Length of service, seniority, the kind of work engaged in, the responsibilities involved, the enormity of the violation, the probability of recurrence, past conduct, whether or not the act was wilful or was in the field of thoughtlessness or carelessness, the effect on discipline and service generally on the property, and all other pertinent considerations to the extent that they are shown by the record should be weighed and carefully considered, and if on such consideration it becomes clear that there has been an abuse of discretion corrective action should be regarded as authorized and proper and accordingly taken."

The mitigating facts show that the Claimant's wife was pregnant and on the verge of having a baby; that Mrs. Henderson was a dissatisfied passenger because her Pullman space had been sold; that she had complained to the train conductor, the porter and the Pullman Conductor; that the Claimant reported this along with his trouble in returning 15c change to her when he moved her to the roomette. The occupancy of the roomette was shown on the call card, the helper train conductor knew of the occupancy of Roomette 7 in Car 158 as did the chair car attendant. The report of the Claimant dated March 24th showed the moving of Mrs. Henderson into Pullman space. Arrangement had been made for Claimant's relief if necessary. His service record which was considered by the Carrier at the hearing showed an act of discipline a "caution" for not properly entering

his cash on his report; it also showed four commendations in nine years' service. The Carrier refused to consider the question of intent and whether the act was wilful, thoughtless or careless. That when Claimant came off his trip he had to take his wife immediately to the hospital. That he had only 9 hours sleep throughout the trip. That both Mrs. Henderson and the Claimant were emotionally upset. There is no evidence of a wilful act, or a deliberate intent to defraud the Carrier.

The facts in this case justify discipline, but the dismissal from the service was unreasonable and arbitrary as revealed by all the facts of this case.

The Claimant should be returned to the service with seniority rights unimpaired, but his record should not be cleared of the charges, nor should vacation and wages lost be paid him.

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 act of the Carrier in dismissing Sheppard from the service was unreasonable and arbitrary.

AWARD

Claim for restoration to service sustained with full seniority rights. In all other respects claim is denied in accordance with this Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 16th day of September, 1952.