Award No. 7004
Docket No. PM-7127

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of J. H. Blount, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Chicago Eastern District.

Because The Pullman Company did, under date of February 2, 1954, take disciplinary action against Porter Blount by assessing his record with a "Warning", which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, because it was not proved beyond a reasonable doubt that Porter Blount was guilty of the charges as is provided for in the rules of the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys in the service of The Pullman Company in the United States of America and Canada, represented by the Brotherhood of Sleeping Car Porters, Revised, Effective January 1, 1953.

And further, for the record of Porter Blount to be cleared of the charge in the instant case, and for the penalty (a Warning) to be expunged from his record.

OPINION OF BOARD: Claimant, together with the claimants in PM-7128 and PM-7129, has been assessed with a "Warning" upon a charge of gambling on Company property. He claims that the evidence produced against him does not meet the requirements of the second paragraph of Rule 49 which reads:

> "Discipline shall be imposed only when the evidence produced proves beyond a reasonable doubt that the employe is guilty of the charges made against him."

The three claimants and a conductor were all assigned in continuous service to a football special train which was standing in a station awaiting return trip.

An inspector entered the train and testified upon the hearing that all three claimants and the conductor were playing poker; that there was money on the table in front of each of them; and that one of them raked in a pot upon completion of a hand. The inspector submitted himself to cross-examination but Claimant's representative asked no questions.

The conductor initially wrote a letter stating that he was present when the inspector entered the car but that he did not see any gambling going on. Later when he himself was charged with gambling, he waived hearing and accepted the assessment of a "Warning."

The three claimants admitted they were on continuous duty and stated that they were in the same car together listening to a radio broadcast of the football game. At the hearing all three claimants denied that they were gambling but refused to answer such questions as whether they were seated at a table, whether there was money on the table and whether they were playing cards.

FIRST: We give no consideration to the fact that one of these cars was not tidy and that two of the claimants were absent from their own cars, because the Carrier did not charge them with these derelictions. Nor do we give any consideration to the conductor's acceptance of the assessment of penalty; his action may lay him open to an inference of guilt but the claimants are entitled to draw the equally compelling inference that he preferred to buy off an investigation and the possibility of a severe penalty with a compromise assessment of warning. Finally we give no consideration to the fact that the penalty of "Warning" assessed here may be considered "mild"; an unfounded charge should not find support in mildness of penalty, no matter how mild.

SECOND: The Organization contends that the charge was not proved beyond a reasonable doubt, because "one man said that four men were gambling and four men said they were not gambling."

Numerical superiority of witnesses certainly raises a doubt, but not necessarily a reasonable doubt. Corroborating circumstantial evidence or proof of faulty perception, bias or interest often resolves a conflict in favor of one man's testimony as against an array of witnesses.

This record presents no proof of faulty perception, bias or interest sufficient to resolve the conflict. The testimony of both the inspector and the claimants, all of them interested witnesses, was left wholly untested by cross-examination.

The claimants contented themselves with a general denial of the ultimate conclusion that they were gambling; and they left uncontradicted and undenied upon the record the specific assertions of the inspector that they were seated together at a table, that they were playing cards, that each had money before him on the table and that upon completion of a hand one of them raked in the pot.

In this posture of the record we are unable to say that the Carrier acted unreasonably in concluding that the record established the charge beyond a reasonable doubt.

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 Carrier did not violate the Agreement and the disciplinary action taken should stand.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 17th day of June, 1955.