

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: * * * for and in behalf of Jim, Hurd, who is now, and for some time past has been, employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company as a porter operating out of Chicago, Illinois.

Because the Chicago, Milwaukee, St. Paul & Pacific Railroad Company did, under date of August 24, 1954, take disciplinary action against Porter Hurd by giving him an actual suspension of thirty (30) days; which action was based upon charges unproved, and was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Hurd to be cleared of the charge in this case, and for him to be reimbursed for the thirty (30) days' pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: Porter Jim Hurd, claimant herein, was suspended for thirty days after a hearing on the following charges:

1. For engaging in altercation with passenger on the train who occupied space in the sleeping car to which you were assigned as porter, this in violation of rule 52, Quote:

All employees are prohibited from entering into altercation with any person regardless of provocation. They will make a note of the facts, if necessary, and report to their immediate superior.

2. For making insulting and derogatory remarks during altercation with this passenger.
3. For awakening passengers in berths in your car without authority or necessity to do so.
4. For failure to take advice and direction from Sleeping Car Conductor relative to arguing with passenger and relative to making an apology to passenger for engaging in altercation with him.

The claim is for Hurd's record to be cleared of the charges and that he be reimbursed for the loss of thirty days' pay. The basis for the claim is

that the charges were not proved and that the imposition of the discipline by the Carrier was unjust, unreasonable, arbitrary and in abuse of Carrier's discretion.

The record shows that the incidents upon which the charges are based arose out of the contacts between claimant in his position of porter, and a tour manager for the American Express Company who was a passenger in his car in charge of a number of passengers on a tour arranged by that company. The claim is based largely upon the argument that a statement by the tour manager introduced at the hearing was improper evidence and should not have been considered. The tour manager made a written report to his employer, complaining about conditions and service on this Carrier and others, and also setting forth the incidents involving claimant which are the basis of the charges against him. The American Express Company then complained to Carrier about claimant's conduct; a meeting was held at the offices of the Express Company, at which that Company refused to give Carrier officials the original report but allowed them to make a copy. A copy was made of the portions of the report which dealt with claimant only; this copy was compared with the original report by an officer of the Carrier who then swore before a notary that it was a true and correct copy. It was this copy which was introduced at the hearing over claimant's objection.

Claimant likens this situation to that in Award 1989, where the Board held that unsigned reports by unnamed inspectors, unknown to the claimant in that case, were not proper evidence upon which to sustain the charges against him. We do not agree that the situation here is analogous. If the signed statement by the tour manager would have been admissible, we feel that the conformed notarized copy was also admissible. No reason is shown for believing that the copy was not exact; the oath of the Carrier official to that effect is not attacked. It was not the lack of signatures *per se* which made the statements deficient in Award 1989; it was the fact that the persons who made the statements were completely unidentified. Here, the maker of the statement was clearly identified and further, the record shows that claimant knew in advance of the hearing that the tour manager had made a statement about the incident. We agree that under normal circumstances original signed statements should be required; but we do not feel that in this case claimant was prejudiced by the admission of the certified copy of the tour manager's statement or by the fact that only the parts of the statement referring to claimant were included. In any case, Carrier's decision does not rest upon this statement alone. And Claimant objects to the Carrier's use of another unsigned statement and also contends that on the basis of all the evidence the charges were not sustained. No purpose would be served in this opinion by discussing all of the contentions made or reviewing all of the evidence in the record. It is sufficient to state that after a careful study of the entire record, we have no doubt that there is evidence of a substantial nature to sustain the charges and justify the discipline imposed; and to allude to the most convincing of such evidence.

The basic charge, out of which the others grow, is that claimant engaged in an altercation with a passenger on the train. "Altercation" is defined at page 76 of Webster's New International Dictionary, Second Edition, Unabridged, as follows: "Warm contention in words; a dispute carried on with heat or anger; controversy; wrangle; wordy contest." The statement of Conductor Beckett, which is characterized in claimant's submission, page 5, as "the only statement in the case that can be recognized as any evidence" sets forth, among other things, that Hurd "rushed up to (the tour manager) and started to argue with him," that Hurd "was sore and spoke in a loud voice," that he "was uncontrollable," that he "did loudly argue" with the tour manager and that he refused to apologize to the tour manager when Beckett asked him to. Beckett was available at the hearing to testify but claimant chose not to call him for questioning. On this state of the record, it cannot be said that Carrier was arbitrary in choosing to believe Beckett rather than claimant; and Beckett's statement alone is sufficient to support the basic charge of engaging in an altercation.

We feel that there was some provocation here for claimant's conduct; the record clearly indicates that the tour manager was also at fault in bringing the altercation about. But the rule under which claimant works does not allow for such conduct even when provoked. The rule was violated and under the circumstances of this case a suspension for thirty days cannot be said to be an arbitrary or unreasonable punishment. See Award No. 3109.

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

That there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1955.