

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

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

Because The Pullman Company did, under date of March 2, 1954, take disciplinary action against Attendant R. C. Smith by assessing his record with a "Warning"; which disciplinary action was based upon charges unproved, and was unjust, unreasonable, and in abuse of the Company's discretion.

And further, because the charges in this case upon which the discipline was assessed were not proved beyond a reasonable doubt as is provided for under the rules of the Agreement covering the class of employees of which Attendant Smith is a part.

And further, for the record of Attendant Smith to be cleared of the charges in this case, and the disciplinary action taken (a warning) to be eliminated from his service record.

OPINION OF BOARD: Attendant R. C. Smith was disciplined by a "Warning" after a hearing on the following charge:

"You failed to make necessary preparations for coffee service leaving Chicago, Illinois, failed to comply with a Pullman Conductor T. C. Kerr's instructions regarding liquor service to a passenger, failed to close buffet in accordance with instructions, and further, you made disrespectful remarks to Conductor Kerr when he called these derelictions to your attention."

Claimant contends that the charge was not proved beyond a reasonable doubt as required by Rule 49. The evidence in this case consists of written statements by the conductor and a brakeman, and both the written statement and oral testimony of Attendant Smith. There is a good deal of evidence, much of it conflicting and unclear, and it would serve no purpose to attempt to summarize it all in this opinion. However, reference may be made to the evidence concerning the coffee incident, which alone is dispositive of the case. The conductor's statement asserts that he was asked by a number of passengers why they could not have coffee, and was told by passengers that Smith had told them he had no coffee. Upon being questioned, Smith said the equipment was not worth working with. The conductor touched the urn and found

it cold, indicating that no coffee had been made since the trip started. It was forty-five minutes from this time until the first coffee was served.

Claimant, on the other hand, stated that he made coffee in the urn before the train left Chicago; and that when the conductor asked him why he did not make coffee, he told him that people had coffee on their tables and were drinking it at that time. He also testified that he did not mention the equipment, but that the conductor told him to use the hot cups if he ran out of coffee. He did not explain why the conductor asked him why he did not make coffee, or why the conductor mentioned running out. He began to describe an incident wherein the conductor had asked him why he didn't serve coffee to some girls, but was cut off by his representative before he could finish. Carrier's representative attempted to ask Smith several times to confirm or deny the conductor's statement that the urn was cold, but Smith was not permitted by his representative to answer any question about this statement.

The question as to whether the urn was cold was obviously proper and pertinent to the investigation. We can only repeat what we have said many times before: Employees in these investigations are required to answer all questions pertinent to the offense with which they are charged; and a refusal to answer subjects them to inferences that the replies if made would have been unfavorable to them. In view of the evidence outlined above, and Claimant's refusal to answer questions and explain certain conflicts, we find that the Carrier was justified in finding that the charge, as it related to Claimant's failure to prepare coffee, was proved beyond a reasonable doubt. Since the charge as to the preparation of coffee alone is sufficient to support the discipline imposed, there is no need to discuss the remainder of 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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of January, 1956.