

Award No. 7363

Docket No. PC-7491

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,
PULLMAN SYSTEM**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor W. J. Schoeps, Chicago East District, that:

1. Rule 49 of the Agreement between The Pullman Company and its Conductors was violated by the Company on June 26, 1951, when the Company assessed a "Warning" against Conductor Schoeps' record.
2. This action did not constitute a fair and impartial decision as required by Rule 49 of the Agreement.
3. We request that this "Warning" be expunged from Conductor Schoeps' record.

OPINION OF BOARD: The facts of this case are difficult to establish, there being conflicting testimony on the part of the principles. However, the following points seem to be undisputed. Claimant Schoeps arrived in Chicago on April 4, 1951, as Conductor in Charge of Pullman cars on Santa Fe Train 18, the "Super Chief". Day Agent Paul Groth was assigned to meet the train. He stationed himself on the platform by Track No. 4 at the point where the head sleeper was stopping. Before all of the passengers had detrained, Conductor Schoeps appeared out of uniform and proceeded to the station. He was stopped by Agent Groth and reminded that he was violating his instructions. Whether he was ordered by Groth to get back in uniform and see that the passengers were properly detrained, as Groth has stated, is a matter of dispute. But admittedly Claimant did leave "prematurely".

Because of certain extenuating circumstances brought out at the hearing, we are asked to reverse the Carrier's decision to place a "Warning" notice in the record of Claimant Schoeps.

The issue involves two questions: (1) Did or did not Conductor Schoeps perform his duties properly upon arrival at the Chicago terminal on the date in question? And (2) was he insubordinate to a Pullman official?

A careful study of the record establishes that Claimant did not fully comply with his instructions and properly perform his duties upon arrival at the Chicago terminal on April 4, 1951. In his initial reply to Day Agent Groth's charges he acknowledged that he left the train "prematurely". When asked, on cross-examination at the hearing, where he detrained from his answer was, "From the head end of car 187". (Tr. p. 17) When asked if he saw any passengers get off of car 187 before he got off, his answer was "No". (Tr. p. 18) While he claims that he saw only a few late passengers get off of car 187 while he was standing and talking to Day Agent Groth, he does not deny that he hurried away "prematurely".

The testimony with respect to the exchange of remarks between Day Agent Groth and Claimant Conductor Schoeps, on the station platform, is so contradictory and unsupported on either side that we cannot conclude that there was insubordination. However, it is quite clear from the record that Claimant was reminded that he was not properly following instructions and performing all his duties. Whether he refused to perform properly, or simply neglected to do so, the fact remains that Claimant failed in part of his duties. For this he could be warned. And it is not for us to set aside the action of Management.

As to the extenuating circumstances, had these matters been brought to the attention of the Management at the time of the incident it is possible that more consideration might have been given them. In any event they were matters subject to the discretion of those responsible for enforcing regulations on the property. Unless there has been a gross miscarriage of justice and the Carrier has acted in an arbitrary and capricious manner, this Board should not substitute its judgment for that of the one regularly charged with the responsibility of maintaining order and enforcing reasonable regulations. We see no adequate reason for sustaining this claim. The action taken was not without cause.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the Carrier and the Employee involved in this dispute are respectively carrier and employee 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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1956.