Award No. 7656
Docket No. PM-7888

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James P. Carey, Jr.—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of W. R. Johnson, who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of Kansas City, Missouri.

Because The Pullman Company did, under date of June 27, 1955, take disciplinary action against Porter Johnson by giving him an actual suspension of two (2) round trips which resulted in a loss of pay of approximately twenty (20) days; which action was based upon charges unproved and was unjust, unreasonable, and in abuse of the Company's discretion.

And further, because the charges against Porter Johnson were not proved beyond a reasonable doubt as is required under the rules of the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys employed by The Pullman Company in the United States of America and Canada.

And further, for the record of Porter W. R. Johnson to be cleared of the charges in this case, and for him to be reimbursed for the twenty (20) days pay lost as a result of this unjust action.

OPINION OF BOARD: Porter W. R. Johnson was tried and found guilty of the following charges:

> 1. On trip leaving Kansas City January 12, 1955, you arbitrarily called the military policeman occuping Berth Lower 12 at 6:00 A. M., and later returned to his space at about 6:15 A. M. engaging him in an angry dispute and demanding that he get out of bed.
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> 2. On the trip leaving Kansas City January 25, 1955, you solicited gratuities from military passengers in your car, and further, you falsely accused the passengers of stealing coat hangers.

He was suspended for one round trip in his regular assignment (Kansas City—Denver) on Charge 1, and given a like suspension on Charge 2. It is contended that the evidence did not establish his guilt beyond a reasonable doubt as required by Rule 49 of the 1953 Agreement between the Company and the Brotherhood.

The essential evidence concerning Charge 1 comes from Sgt. Charles Wyatt, an Army M.P., and from claimant. In a written report to his superior officer, Sgt. Wyatt's stated that he left a call for 7:00 A. M. January 13, 1955, but claimant called him at 6:00 A. M., and again at 6:15 A. M.; that on the second call Porter Johnson peremptorily ordered him to "get the hell out of bed"; that in response to Wyatt's protest that it was only 6:15 and he had left a call for 7:00 A. M., Johnson said he did not care what time it was, and that he (Wyatt) would get up when Johnson called him. Wyatt denied threatening Johnson with bodily harm if he ever again called him ahead of time, and Wyatt's statement makes no mention of his own demeanor at or about the time of the incident.

Claimant denied Wyatt's statement in all material respects. His testimony is that as he customarily called members of the train patrol at 6:20 A. M., he called Wyatt at that time because Wyatt was engaged in that line of duty; that in reply to Wyatt's question as to why he was called at that time instead of 7:00 A. M., claimant explained that he thought it necessary to provide seating space for the large number of civilian passengers, some of whom were already up. According to claimant, Wyatt became enraged and loudly and blasphemously berated him.

The only other direct evidence bearing in the incident is set forth in the written statement of Brakeman Curnow. Claimant approached Curnow at the end of the car about 6:25 A. M. and told him he had just called Wyatt, who raised a loud commotion and was cursing because he had been called before 7:00 A. M. Curnow further stated that Wyatt then approached and created a disturbance; that Wyatt told Johnson in loud angry tones "G. D. you, if it ever happens again, I'll put a 45 slug into you." Curnow said that "my observation of the matter was that Wyatt was the aggressor and Porter Johnson seemed to be attending to his duties."

Other evidence contained in a report of investigation made by the Army is wholly hearsay and not deemed worthy of serious consideration. The call card was received in evidence and shows a 7:00 A. M. call for the space occupied by Wyatt. Claimant testified that he did not notice this entry before he called Wyatt. Wyatt does not say that he left the call with claimant, but we think claimant was charged with notice of the entries on the call card. There is nothing to indicate that the card was altered. Nevertheless, we are convinced that Johnson's denials and explanation, coupled with the brakeman's corroboration of material aspects of Johnson's testimony, raise a reasonable doubt of claimant's guilt on Charge 1. The contention that Wyatt's denial of threatening to shoot Johnson is immaterial and irrelevant, is without merit. It was so closely connected with the circumstances attending the early call that it was an integral part of the whole transaction and throws light on Wyatt's temper and attitude. It is therefore a material element to be considered in appraising Wyatt's credibility with respect to the charges that claimant arbitrarily called him at 6:00 A. M. and again at 6:15 A. M. and engaged him in an angry dispute and peremptorily ordered him to get out of bed. Wyatt was impeached in respect of a material fact and the remainder of his testimony was therefore of doubtful probative value. Johnson's own admission that he called Wyatt at 6:20 A. M. is not alone sufficient to prove Charge 1 beyond a reasonable doubt.

We are further of the opinion that Charge 2 is adequately supported by the evidence of record. We think the evidence meets the requirement of proof beyond a reasonable doubt. In Award 6924 we said that a reasonable doubt is a substantial doubt which remains after examining the evidence in its entirety. We find no basis for entertaining such a doubt here.

Claimant denied that he accused the airmen of stealing coat hangers or that he solicited tips. The statements of the various airmen concerned sustain these charges and it is unnecessary to relate their testimony in detail. We can find no basis for the contention that the Carrier's action was arbitrary or capricious.

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 disput involved herein; and

Carrier's action in suspending Porter W. R. Johnson from service for one (1) round trip in his assignment on Charge 1 is set aside, and Carrier is ordered to compensate Porter Johnson for all time lost on account of said suspension. Carrier's action in suspending Porter W. R. Johnson from service for one (1) round trip in his assignment on Charge 2 will not be disturbed.

AWARD

Claim sustained in part and denied in part in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.