

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of L. G. Weathersby who was formerly employed by the Pullman Company as a porter operating out of the Chicago Southern District.

Because The Pullman did, under date of September 20, 1955, discharge L. G. Weathersby from his position as a porter for The Pullman Company on charges unproved. And further, because L. G. Weathersby did not have a fair and impartial hearing.

And further, because the charges upon which his discharge was based were not proved beyond a reasonable doubt as provided for under the rules of the Agreement covering the wages and working conditions of the class of employees of which Mr. Weathersby was a part.

And further, for Mr. Weathersby to be returned to his former position as a porter in the Chicago Southern District, and for him to be paid for all time lost as a result of this unjust and unreasonable discharge.

OPINION OF BOARD: This is a discipline case. It involves a porter in charge, one L. G. Weathersby. He was discharged by the Respondent and the Organization here seeks his reinstatement with seniority and service record unimpaired and pay for all time lost on the ground that claimant was not given a fair and impartial hearing within the meaning of Rule 49 and Rule 51. The pertinent portion of Rule 49 provides:

"RULE 49. Hearings. An employe shall not be disciplined, suspended or discharged without a fair and impartial hearing.

"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."

"RULE 51. * * * When testimony, written or oral, is presented in a hearing against an employe, only that part of the testi-

mony which is germane or relevant to the charges against the employee shall be admitted in the record."

The occurrence in question took place on June 7, 1955. Claimant in Notice of Investigation dated July 21, 1955, was charged with making improper remarks to a woman passenger, placing his arm around said passenger and of having the odor of intoxicants on his breath.

Hearing on these charges were held on September 1, 1955 and the claimant was given written notice that as of September 20, 1955 he, (Claimant) stood dismissed from service.

The Organization predicates its request that Respondent's action in dismissing claimant be rescinded by this Board, on the ground that he did not have a fair and impartial hearing within the meaning of the above rule in the following particulars: (1) that the name of the complaining witness was not disclosed (2) that the allegations contained in the statement were not corroborated (3) that evidence concerning his actions relative to another female passenger (Mrs. Grim) was improperly introduced and considered, since no formal complaint was made by her, and (4) the statements of other members of the crew were based upon hearsay, and not actual knowledge.

The Respondent took the position that the transcript of hearing clearly indicates that Claimant was guilty of making improper advances and using suggestive language toward the individual who made complaint. It was pointed out that the material portions of such complaint were substantiated by the statements of members of the crew as well as the fact that such last mentioned statements clearly indicated that the Claimant had the odor of intoxicants on his breath. It was further asserted that claimant's obvious improper conduct toward a second passenger, even though no formal complaint was made, indicated that the company could not continue claimant in service, with the degree of safety the public might reasonably expect of a Carrier.

That we are here confronted with Rules (49, 51) that are subject to a different construction than those contained in most agreements is obvious. But here, as in all cases concerning discipline, each case must be considered in the singular and the evidence adduced therein measured against the prevailing applicable rules. We are of the opinion that no right of the claimant was abridged by the failure to disclose the name of the complaining witness or the introduction of a photostatic copy of the complaint. The parties have by written agreement stipulated that disclosures of the name of a complaining witness is not required. The Respondent's offer to produce the original complaint for purposes of comparison was not accepted by the Organization, so, therefore, we accept the validity thereof and note that such complaint was made promptly and immediately after the alleged acts occurred. Nor can we agree that various statements by members of the crew constitute hearsay. They were based on either direct conversations with the complainant or upon observations made by them relative to the odor of intoxicants on the breath of claimant.

We are of the opinion that the record here clearly, definitely and conclusively shows that claimant was guilty of conduct of the type and nature contained in the Notice of Hearing and that the statement of the complaining witness was corroborated by other evidence which justifies a finding that the claimant was guilty, as charged, 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1957.