

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

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PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY

STATEMENT OF CLAIM:

\* \* \* for and in behalf of A. M. Harden, who is now, and for some years 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 September 7, 1954, take disciplinary action against Porter Harden by placing on his record the following notation:

"1. Responsible as porter assigned to Car K-18 on Train 18 arriving Chicago August 11, 1954, for taking rest not authorized by working itinerary, thereby absenting yourself from duty without proper authority.

2. Responsible for failure to perform all of your assigned duties."

Which action was based upon charges unproved, and was therefore unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further for the record of Porter Harden to be cleared of the charge in this case, and for the items above referred to as 1 and 2 to be expunged from his service record.

**OPINION OF BOARD:** The facts of this case are simple and undisputed. At the time in question, Claimant Harden was assigned to Trains 17 and 18, operating from Chicago to Tacoma, Washington and return. These trains carried but one tourist sleeper and the porter in charge was the only sleeping car employe on the train. Porters on this run were entitled to a rest period from 12:00 Midnight to 4:00 A.M. However, an arbitrary allowance of two hours' pay was made as compensation for any necessary calls the porter might be required to make during his rest period.

On the morning of August 11, 1954, Claimant found it necessary to remain on duty to detrain a passenger at Winona, Minnesota at 2:00 A.M. At approximately 2:25 A.M. he retired in the berth vacated by the Winona passenger. He hung his jacket from the berth curtain to indicate where he could be reached and expected to arise at 5:00 A.M. to call a passenger who was to leave the train at Milwaukee. Carrier Inspector Chauveau boarded the train at Milwaukee about 6:15 A.M., noted the porter's absence and found Claimant Harden still asleep in his berth. The report of Inspector Chauveau became the basis of the disciplinary action taken. From this the instant claim arose.

The record indicates that Porter Harden had approximately eleven and one-half years' of service with the Carrier prior to this incident. And it fails to disclose any previous disciplinary action. Claimant insists that he set his alarm clock to awaken him at 5:00 A.M., but for some reason it failed to disturb his sleep.

The record indicates that Claimant had a fair hearing. At the hearing the facts set forth clearly established that Claimant did fail to call a passenger and assist him in detraining at Milwaukee. Claimant admits that he failed to discharge his duty at this point. While there may have been extenuating circumstances, it appears that the Carrier took these into consideration in assessing a light penalty. Under the circumstances we can find no proper basis for substituting our judgment for that of the officer charged with the responsibility of making the initial decision. To reverse this action, we should have evidence of unfairness or arbitrariness on the part of Management. This record discloses nothing of this sort.

**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: A. Ivan Tummon**  
**Executive Secretary**

**Dated at Chicago, Illinois, this 4th day of April, 1957.**