

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, 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 R. R. Grammar, Penn Terminal District, that the Pullman Company acted arbitrarily and capriciously and not in accordance with the evidence presented at the hearing held under date of April 12, 1957, when:

1. Conductor Grammar was dismissed from the service of The Pullman Company under date of April 18, 1957.
2. We now ask that Conductor Grammar be restored to service with full seniority rights and vacation rights, and be credited and paid for all lost time in accordance with Memorandum of Understanding concerning compensation for wage loss (p. 85 current agreement).

OPINION OF BOARD: Claimant, Pullman Conductor R. R. Grammar, was dismissed from the service of The Pullman Company under date of April 18, 1957. The claim is based on a charge that The Pullman Company acted capriciously, and not in accordance with the evidence.

On December 28, 1956, Conductor Grammar was working Pennsylvania Train St. Louis to New York when N. C. Clary, a Pennsylvania operative, boarded the train at Dayton, Ohio, as a coach passenger. Clary testified that he asked Pullman Conductor Grammar if he had any sleeping accommodations to Philadelphia, and on Conductor Grammar's reply that he did not, Clary said "I am dead for sleep. It is worth a five spot to me to get a bed." Clary further testified that at 9:05 just out of Columbus, Ohio (some 20 minutes later) Grammar came and assigned him Roomette No. 17, Car 307, of which he took possession. Clary further testified that Conductor Grammar collected \$19.89 combined fare for rail step up from coach to Pullman, Pullman fare, and tax. Clary also testified that he paid Conductor Grammar the promised \$5.00 tip. Evidence disclosed that the combined fare, including rail step up from Columbus, Ohio to Philadelphia was \$17.14. The records of both Pullman Conductor Grammar and Train Conductor Spang indicate that the fare in question was sold as of Steubenville, Ohio, fare \$13.28, which amount was reported and accounted for.

The evidence further disclosed that berth space was available at Dayton, and thus available at all times if the witness Clary had asked for the same after boarding at Dayton.

Conductor Grammar, the accused, denies the charges, stating that he sold extra space when asked, for the correct price, accounted for the funds collected, and issued a receipt for the same from Steubenville, as this was the nearest charge point.

The hearing is fraught with error and leaves much to be desired on both the part of the company and the organization. This is a serious charge, as are all charges involving misapplication of funds, yet it was not called to the accused's attention until January 21, 1957, twenty-four days after the alleged commission date, December 28, 1956, and then by letter. Reasonable handling would have required the operative to report his allegations during, or at the end of the run, and an immediate and on the spot investigation to be made by the proper authorities on the receipt of such report.

The hearing examiner, H. P. Smith, lacked experience in conducting hearings, allowing R. C. McCarthy to usurp his functions and dominate the hearing, to the detriment of the carrier. H. N. Chancey, the local chairman, turned the hearing from one of inquiry, to a course in Sea Law, as may be seen on pages 3 through 7, and 36-42, of the hearing transcript. It is elemental that men assigned to conduct and participate in hearings of this character should be skilled in the art of presentation of evidence and have an understanding of the fundamentals of the proceedings in which they are engaged. It is unfortunate that in this instance these conditions did not exist. The responsibility is equally that of the organization and the carrier.

Conductor Grammar should be restored to duty with full vacation and seniority rights, but without pay for lost time, the organization being in part responsible for the nature of the hearing, and the accused R. R. Grammar being guilty in part, having issued an unpunched and therefore improper receipt. The loss of work is more than sufficient punishment for such an infraction.

Many issues have been raised and not dealt with in detail. They will be commented on briefly. The complaint was made that the charges were indefinite and vague. Charges were forwarded to the accused March 18, 1957, two weeks before the hearing April 2, 1957. Objections to the charges should have been made prior to hearing or objections would be waived. In this instance the charges were sufficiently definite, specifying:

- A. Failure to issue cash fare receipt.
- B. Failure to account.
- C. Failure to report.

An objection has been made relative to the hearing itself, in that by its make-up, it was not a fair and impartial hearing as H. E. Worley was both primary accuser and judge. There is no substance to this complaint and the record discloses no grounds for criticism of H. E. Worley. At best, Superintendent Worley was the reviewing officer who ordered trial and reviewed the findings of the hearing officer. Page 5 of the hearing transcript indicates that all concerned recognized that the hearing officer was Smith.

Considerable emphasis was placed on the contention that because of the nature of his work, the testimony of Operator Clary was suspect; that because

it was not corroborated, it was therefore of no probative value. There is no significance to this complaint. The testimony of one witness, if believed, is sufficient.

The actions of Operative 910 (Clary) leave much to be desired. He was assigned to Roomette No. 17, and testified he was overcharged. He testified he saw no other conductor, yet he closed his door and went to bed within 30 minutes of assignment to Roomette 17. If things were wrong, as his testimony gives him reason to suspect, his duty was to leave his door open, stay awake, and find out if others were a part of it. This, the ordinary thing, he did not do, and these actions make his testimony suspect. Train Conductor Spang had a duty to collect a fare from Roomette 17 from the point it was occupied. He claims he did his duty. He collected such a fare from Steubenville, not Columbus.

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 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 claim is sustained as per Opinion.

AWARD

That Claimant R. R. Grammar be restored to duty with full seniority, but without compensation for lost time.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of March, 1959.