

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of Ben Stewart, who was formerly employed by The Pullman Company as an attendant operating out of the Chicago Commissary.

Because The Pullman Company did on the twentieth day of February, 1959 discharge Mr. Stewart from his position as an attendant in the Chicago Commissary, which disciplinary action was based on charges that had not been proved beyond a reasonable doubt, as is required by the rules of the collective bargaining agreement between The Pullman Company and the class of employees of which Mr. Stewart was a part.

And further, because Mr. Stewart did not have fair and impartial hearing, as provided for in the aforementioned agreement, because Management introduced certain written statements as evidence in this case over the objections of the representative of the Organization, which represented Mr. Stewart. And because the introduction of these written documents over the Organization's objections was in violation of the due process principle or the right of an employee accused of an offense to have the opportunity to confront and cross-examine the individual giving testimony against him.

And further, for Mr. Stewart to be returned to his former position as an attendant in the Chicago Commissary and for him to be reimbursed for all wages lost as a result of this unjust action.

OPINION OF BOARD: This is a disciplinary case. On or about February 20, 1959, the Carrier dismissed from service the Claimant because of his alleged misconduct in connection with an incident occurring on or about November 7, 1958, while the Claimant was in the employ of the Carrier. The Carrier charged that while the Claimant was on duty, he was (1) under the influence of intoxicants, and (2) entertained a woman coach passenger behind closed doors in a drawing room. The Organization contends that the Carrier's action of dismissing the Claimant was not justified because the Carrier (1) failed to prove Claimant was guilty beyond a reasonable doubt, and (2) Claimant was deprived of a fair and impartial hearing because the Carrier used

written statements from witnesses at the hearing which included hearsay evidence not germane to the charges.

The Claimant submitted a statement denying that he was drunk or under the influence of intoxicants on the date in question. The Claimant admits that the train and pullman conductors met him as he was coming out of the drawing room door, but denies that he had been entertaining a woman coach passenger in the room. On the basis of the entire record we think the guilt of the Claimant has been fully established by competent, corroborated evidence.

We do not believe any useful purpose would be served by a detailed review of the evidence found in the record. It is also our opinion that the evidence produced by the Carrier proves beyond a reasonable doubt that the Claimant is guilty of the charges made against him. We also find that the Organization's allegation that the Claimant was not afforded a fair and impartial hearing because of the use of written statements is without merit and unsupported by fact. This Board, in a long line of Awards covering many years of experience, has rather consistently held that written statements of witnesses not present at the investigation are admissible. We concur in the reasoning and findings in those Awards, too numerous to list herein.

The Organization requested us to follow the reasoning contained in our sustaining Award 8713, wherein it was held that the only basis for the dismissal was the evidence contained in only two statements. We easily distinguish the instant case from Award 8713, because in the instant case the record contains a large number of written statements by many witnesses supporting the charges made by the Carrier. This claim will be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1960.