

Award No. 9519

Docket No. PM-9404

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of F. Haynes, who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of the Chicago Central District:

Because The Pullman Company did, under date of September 24, 1956, take disciplinary action against Porter Haynes by giving him an actual suspension of 9¼ days from his regular assignment in the Chicago Central District.

Further because said action was based on charges unproved, and the charge "you engaged in a fight with Conductor D. Ahlfeld during which you used obscene language to him and struck him" was not proved beyond a reasonable doubt as is required by the second paragraph of Rule 49 of the Agreement between The Pullman Company and Porters, Attendants, Maids & Bus Boys in the service of The Pullman Company in the United States of America and Canada, represented by the Brotherhood of Sleeping Car Porters.

And Further, for Porter F. Haynes' record to be cleared of the charge in the instant case, and for him to be reimbursed for the 9¼ days he lost as a result of this unjust action.

OPINION OF BOARD: Claimant Haynes was charged with engaging in a fight with, and use of obscene language toward, Conductor D. Ahlfeld. Although the facts of the incident upon which the charge was based cannot be adequately determined by considering only Claimant's version of the incident or by considering only Conductor Ahlfeld's version, the facts do emerge with adequate clarity and assurance from a consideration of the statements of both men. These statements, considered together, reveal by the required degree of proof that (1) tension or ill will had existed between Claimant and Conductor Ahlfeld, (2) that both men shared the responsibility for this personal antagonism situation, and (3) that this antagonism culminated in a verbal and physical skirmish in which neither man was without fault. The Carrier had reasonable basis for punishing both men, which it did by the penalty of sus-

pension. The Record provides no support for Claimant Haynes' request that Carrier's action in punishing him be disturbed by this Board.

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 penalty assessed by the Carrier should not be disturbed.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August, 1960.