

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Frank J. Dugan, 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 an in behalf of Conductor C. D. Mee, Dallas District, that he was arbitrarily and capriciously suspended from actual service from August 1, 1956, to August 10, 1956.

We now ask that Conductor Mee's record be cleared of these charges, and that he be compensated in full for the time lost, in accordance with the Memorandum of Understanding Concerning Compensation for Wage Loss as shown on page 99 of the current Agreement. This Memorandum reads as follows:

"In this application of Rule 54 'Record Cleared of Charges' of the Agreement between The Pullman Company and its conductors, represented by the Order of Railway Conductors of America, effective January 1, 1951, it is understood by the parties that 'compensation for any wage loss suffered by him (the conductor)' means the wages which the conductor would have earned had he remained at work as a conductor without regard to any amounts he may have earned during the period he was not employed as conductor.

"Similarly, it is understood that if a Pullman conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the Agreement, effective January 1, 1951, and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month."

EMPLOYEES' STATEMENT OF FACTS:

I.

Conductor C. D. Mee, Dallas District, was in regular assignment between Dallas, Texas, and Chicago, Illinois. He operated on Santa Fe trains 116-16 Northbound, and Santa Fe trains 1/15-115 Southbound, designated as Line

in Kansas City. Also, the Company has shown that awards of the National Railroad Adjustment Board support Management in this dispute.

The claim that Conductor Mee improperly was given a 10-day suspension from service is without merit and should be denied.

All data submitted herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Conductor C. D. Mee has been employed by the Pullman Company since 1942. As of the date of the claim, Mee was assigned to Santa Fe Trains 116-16-15-115 operating from Dallas to Chicago and return. On February 20, 1956 he left Chicago for Dallas. He was in charge of four Pullman cars. When the train arrived in Kansas City the Day-Night Agent Buffington noticed that Mee was not on the platform receiving passengers. He asked the porter of one of the cars under Mee's supervision where Mee was. The porter led him to a drawing room of one of the cars. Buffington alleges that Mee was stretched out on a sofa sound asleep. The porter shook him, and, Buffington asserts Mee got up and then fell on the floor. He could smell the odor of liquor in the room and when Mee went in the hallway of the car he could smell liquor on his breath, his gait was not steady and he seemed to be in a stupor. Mee denies that he was drunk or had been drinking explaining that he had a toothache when he left Chicago, had taken several aspirin and at midnight had packed the tooth with a "Red Cross" toothache kit and fell asleep.

Mee was charged with violation of the Conductors' Instruction Manual in that he was: (1) under the influence of intoxicants, (2) sleeping on duty, and (3) failing to be out on the platform to receive passengers. Mee was given proper notice of investigation and it was held on July 6, 1956. Claimant was found guilty of all three charges and suspended for ten days. There are no procedural questions raised by the Organization.

As to the charges that Mee was asleep and was not on the platform to receive passengers at Kansas City the evidence is not controverted and Mee plainly violated both rules.

With respect to the charge of being under the influence of intoxicants the evidence is in conflict. The Organization alleges that the only testimony showing that Mee was under the influence of intoxicants is that of the accuser Buffington and not being corroborated is not sufficient to sustain this charge.

The traditional position of the Board is that it will interfere with the exercise of disciplinary power by the Carrier only when such action is arbitrary and capricious. It is also not the province of the Board to weigh conflicting evidence. In light of such limited review, comparable to that exercised by appellate courts the claim must be denied especially in view of the fact that testimony of a layman that a man smells of liquor, is unsteady on his feet and his eyes are bloodshot is competent evidence to sustain a conviction of being under the influence of intoxicants in a court of law.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 6th day of September, 1961.