

Award No. 10306
Docket No. PM-10818

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Statement of Claim as expressed by the Petitioner, the Brotherhood of Sleeping Car Porters, is as follows:

"* * * for and in behalf of H. C. Collier, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the District of Birmingham, Alabama.

Because The Pullman Company did take disciplinary action against H. C. Collier by penalizing him with thirty (30) days actual suspension; which action was unjust, arbitrary, and in abuse of the Company's discretion.

And further, because the charges against Porter Collier were not proved beyond a reasonable doubt as it is provided for in Rule 49 of the current Agreement between The Pullman Company and the class of employees of which Porter Collier is a part.

And further, for the record of Porter Collier to be cleared of these charges, and for him to be paid the thirty (30) days time loss suffered by him as a result of this unjust and unreasonable action."

OPINION OF BOARD: At the time of the instant dispute, Claimant was Porter-in-charge assigned in regular service to Line 6859 between Birmingham and Washington.

Under date of June 9, 1958, a lady passenger on Claimant's train wrote the Southern Railway a letter of complaint concerning her inability to obtain Pullman space on her trip to Washington on June 5, 1958, and alleging Claimant's discourteous attitude.

We cite from the letter of the passenger:

"When I went into the door he ran up the isle of the car with anger on his face and said to me I told you I had to clean the bedroom up, now you go back and sit down in the coach and wait until I come for you. When I get it ready I'll let you know."

Under date of July 11, 1958, Carrier wrote Claimant a letter that a hearing would be held on July 16, 1958 on charges that while in service on the trip of June 5, 1958, we quote:

"You failed to comply with a woman coach passenger's request for accommodations leaving Chattanooga, although space was available and, further when the woman coach passenger later contacted you for accommodations, you made discourteous remarks to her."

The hearing was held, Claimant appeared and testified. The complaining lady passenger did not appear, but her letter was placed in the record. The transcript of the testimony at the hearing is before us.

Claimant was found guilty and suspended from service for a period of 30 days, Petitioner initiated the instant claim, which was denied at all stages of its handling on the property.

The only evidence of the alleged discourteous treatment is contained in Lucile Prather's letter and is set out above. She did not appear as a witness.

In Award No. 7812 this Division said:

"Written statements, submitted in lieu of witnesses or oral testimony, have often been accepted as evidence by this Board. Such statements are taken for what they are worth and usually require some corroboration in the form of circumstantial or other supporting testimony. Here we have none. No one else complained of Porter Gay's poor service on the trip in question. His record of years of good and faithful service do not indicate that he is the kind of porter who is indifferent to his duties. Neither the conductor nor the brakeman have been produced as witnesses to corroborate the charges made against Porter Gay. Thus this letter from passenger Barnett cannot be accepted as a document which discloses all of the facts of the situation on the trip from Sioux City on August 25, 1954.

While we are reluctant to substitute our judgment for that of management in discipline cases, it our duty and responsibility to see that punitive actions are for proper cause, and are supported by substantial evidence, not a mere allegation of one disgruntled passenger. After a careful examination of the record in this case, we can only conclude that the disciplinary action taken was arbitrary, unreasonable under the circumstances, and without just cause. Porter Gay's record should be cleared of this charge; and for any loss of pay sustained by him, he should be made whole."

So in this case there is no evidence that Porter Collier was discourteous to anyone, during his long and faithful service with the Company.

We pass now to the other charge made against Porter Collier, that "you failed to comply with a woman coach passenger's request for accommodations leaving Chattanooga although space was available." There is a dispute in the evidence as to whether there was space available. Porter Collier testified that he went up to the coach where Mrs. Prather was seated and told her that there was a bedroom available, she asked the charge, and then said she didn't want the bedroom. Mrs. Prather claims she went back to the Pullman asking for space. No good would be accomplished by setting out the evidence, for under Rule 49 of the Agreement:

"Discipline shall be imposed only when evidence produced proves beyond a reasonable doubt that the employe is guilty of the charge made against him."

In Award No. 7140, Referee Cluster said:

"The prior decisions of this Division on the language of the rule under consideration here cannot be said to have placed a consistent interpretation upon that language; the question therefore is open to our further consideration. On the basis of the analysis and discussion set forth above, it is our conclusion that when a discipline case is brought before the Division under Rule 49 of this Agreement, it is our function to consider it in the light of the degree of proof provided by the parties therein rather than under the doctrine of 'substantial evidence,' and if the evidence in the record fails to justify a finding by the carrier that the charges were proved beyond a reasonable doubt, the discipline assessed must be set aside. In this connection, it should be noted that while the phrase 'reasonable doubt' is subject to many interpretations and defies exact definition, this is also true of the phrases 'substantial evidence,' 'abuse of discretion' and 'arbitrary and capricious,' which have been applied by the Board for many years."

The evidence in this case does not meet the requirements of Rule 49. As we have so often said we are reluctant to substitute our judgment for that of management in discipline cases, but in this case we can only conclude that the action taken was arbitrary, unreasonable and without just cause.

Porter Collier should be compensated for any loss of pay sustained by him, and his record cleared of this charge.

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 Employe involved in this dispute are respectively Carrier and Employe 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 penalty given Porter Collier was unwarranted under the record in this case.

AWARD

Claim sustained in accordance with opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1962.

DISSENT TO AWARD NO. 10306, DOCKET NO. PM-10818

Under date of June 9, 1958, a lady passenger wrote the following letter of complaint:

"Dear Mr. Brosnan:

"I believe you will be interested in an incident which occurred on the Memphis-Birmingham Special last Thursday, June 5, leaving Memphis at 9:30 A.M.

"While in Memphis I developed a toothache and decided to return to my dentist on Thursday and asked the Agent at Memphis Wednesday if he would try to get me Pullman space to be picked up at Chattanooga Thursday evening. Upon arrival the Agent at Chattanooga knew nothing about my request, as I left the Memphis Special I asked the Porter on the other train to save me space to Washington. After having a quick dinner I returned to the Pullman and asked the Porter what he had and he told me he would check the train and let me know within a hour. I waited an hour and finally asked the Coach Porter or Trainman to ask the Porter in the Pullman what the prospect was for space. He didn't return. Finally about 9:30 I went back to the Pullman myself and asked the Porter what the chance was. He then advised that he was waiting until they picked up a telegram at Sweetwater regarding the Knoxville space. About 11:00 P.M. the Trainman came through and advised me that all space at Knoxville was sold out.

"After we passed Knoxville I was tired sitting and took a walk back to the Pullman car and asked the Porter if all the passengers at Knoxville got their space. He replied they did but he then added the only thing I have is a bedroom. Do you want a bedroom? I asked how much it was and when he replied around \$15 I said yes I would take it. Well he added I will have to clean it up. He was polishing a passenger's shoes when I went in and never stopped to prepare the bedroom for me. I went back to the coach and returned with my suitcase. When I went into the door he ran up the isle of the car with anger on his face and said to me I told you I had to clean the bedroom up, now you go back and sit down in the coach and wait until I come for you. When I get it ready I'll let you know.

"At this point about 1:30 A.M. I told him that he could forget about the bedroom, with his attitude I was not interested in it.

"I had been in Washington 25 years, came here in a Pullman, and have returned to Memphis two and three times yearly in a Pullman.

"The point I am trying to make is the attitude of the train crew to accommodate the public. The Porter knew when I got on the car what I wanted at 7:30 P.M. and yet at 1:30 A.M. he wasn't willing to go out of his way to sell me anything.

"This information is given to you for what it is worth.

Very truly yours,

/s/ Lucile Prather"

Claimant was the porter to whom the passenger's letter referred, and he was assigned in charge of Pullman service on the train, no Pullman conductor having been assigned thereto. Carrier charged Claimant with failing to comply with the passenger's request for accommodations leaving Chattanooga, although space was available, and with making discourteous remarks to her.

There is no evidence in the record indicating that the passenger had any reason to contrive an entirely false story to harm Claimant. On the contrary, her report shows that she simply was pointing out Claimant's attitude toward accommodating the public, and her knowledge of Claimant's shining shoes, receiving a wire at Sweetwater, receiving a diagram at Knoxville, etc., corroborates and lends credence to her statement of what occurred.

Claimant admitted that he had been working as Porter-in-charge for ten years or more. His working diagram for the trip in question, which he himself had prepared, showed that Bedroom E and Roomette 7 were open for the entire trip. At the investigation, Claimant admitted that the only purpose he is required to make his own working diagram is to be able to determine at any time whether or not there is any vacant space, and his own representative admitted thereat that Claimant "was probably negligent".

Claimant's report of the incident dated June 16, 1958, contains the following:

"I received a wire at Sweetwater, Tenn., from the Ticket Office at Knoxville, Tenn., advising me what space to prepare for occupancy. When I received this wire as to what space to prepare for occupancy, I determined that I had an open bedroom. I did not talk to this lady again until after I received the diagram at Knoxville, Tenn., and verified the fact that I did have an open bedroom. Shortly after leaving Knoxville, Tenn., I went to the coach and told this lady I had a bedroom available and she told me that she did not want a bedroom."

The train was scheduled to arrive at Sweetwater at 10:08 P.M. and to leave Knoxville at 11:20 P.M.

It is significant that Claimant's report confirmed the passenger's statements insofar as receiving a wire at Sweetwater and his having had contact with her shortly after leaving Knoxville are concerned.

In a further letter from Claimant dated June 27, 1958, he stated that he did not wish to change his previous report. However, at the investigation on July 16, 1958, Claimant testified that his report of June 16 was wrong insofar as his statements that he had determined he had an open bedroom when he received the wire at Sweetwater and that he had contacted the passenger "shortly after leaving Knoxville" were concerned, and that these occurrences took place after leaving Johnson City, at about 2:00 A. M.

In Award 1988 (Shaw) we held:

"There is a rule of law that if a witness has testified falsely to one thing that it will be taken for granted that the rest of his testimony is valueless * * * unless corroborated."

Considering the admissions that the lady passenger desired Pullman space; that space was available during the passenger's entire trip from Chattanooga to Washington; that Claimant was negligent, and that he had misrepresented the facts in more than one respect, the majority's conclusion "that the action taken was arbitrary, unreasonable and without just cause" is without foundation or support in the record.

For the foregoing reasons, among others, Award 10306 is in error and we dissent.

/s/ W. H. Castle

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ D. S. Dugan

/s/ T. F. Strunck