

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
(For and in Behalf of S. L. Peete)

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of S. L. Peete, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of St. Louis, Missouri.

Because The Pullman Company did, under date of August 22, 1958, take disciplinary action against Porter Peete by giving him an actual suspension of one round trip in his regular assignment involving a loss of time as a result thereof.

And further, because the charges against Porter Peete were not proved beyond a reasonable doubt as is provided for in the rules of the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys employed by The Pullman Company in the United States of America and Canada, revised January 1, 1953.

And further, because the action taken against Porter Peete was unjust, unfair, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Peete to be cleared of the charges in this case, and for him to be paid for such time as he lost as a result of this unjust and unfair action.

OPINION OF BOARD: This is a discipline case. Claimant Peete was found guilty of being insolent to Night Agent Sohm. He was suspended from service for one round trip in his regular assignment (3¼ days).

The fact that the instant charge arose out of what was termed by some to be a minor duty failure, namely Claimant's failure to place his name card in a holder, is immaterial. The material fact is, was the Claimant, Peete, insolent to Night Agent Sohm? Was the charge proven beyond a reasonable doubt?

Night Agent Sohm testified that after he had informed Claimant of his failure to place his name card in the holder, Claimant responded: "Who do you think you are talking to? A child? Get going . . . I don't give a damn what you do. Get going and leave me alone."

A Depot Passenger Agent testified that he heard part of the conversation between Night Agent Sohm and the Claimant, that Claimant said to Sohm, "Don't you talk to me like that. I ain't no child."

Claimant testified that the Depot Passenger Agent was not present.

Porter Williamson heard Claimant's remarks in an entirely different fashion; he testified as follows: "Porter Peete told Mr. Sohm that he was not talking to a child and that he intended to carry out his instructions . . . Porter Peete asked Mr. Sohm to please leave him alone . . . Porter Peete said that he did not give a damn if he was reported because he had not had sufficient time to do everything before receiving time."

Claimant Peete stated that Mr. Sohm's handling of him was thoroughly improper. He testified: "I told Mr. Sohm that I was not a child."

Claimant denied saying "I don't give a damn." He says that he told the Night Agent "I did not care if he did make a report." He denied having told the Night Agent to "get going and leave me alone". Instead, he says his remarks were "I told him please leave me alone."

The Board is of the opinion that the evidence in the record is sufficient to support a finding by the Company that the Claimant was guilty of the charge against him beyond a reasonable doubt. Under such circumstances, it is not our function to upset that finding.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1962.