

Award No. 10596

Docket No. PM-11906

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of G. Mayfield, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the Kansas City District.

Because The Pullman Company did, through Superintendent J. R. Beavin on February 9, 1960, take disciplinary action against Mr. Mayfield by giving him an actual suspension of fifteen (15) calendar days from service without pay.

And further, because the charge against Porter Mayfield and upon which he was penalized was not proved beyond a reasonable doubt as is required by the rules of the Agreement between The Pullman Company and Porters, Maids, Attendants, and Bus Boys employed by The Pullman Company, represented by the Brotherhood of Sleeping Car Porters.

And further, for the record of Porter Mayfield to be cleared of the charge in this case, and for him to be reimbursed for the fifteen (15) days pay lost by him as a result of this unjust action.

OPINION OF BOARD: It is the claim of Porter Mayfield that in line with his regular duties he was assigned to car American Light in Line 655, loading No. 288, Oakland, California to St. Louis, Missouri, October 4-6, Southern Pacific-Union Pacific-Wabash Train 28-10; that on October 4, 1959 he went into the dining car for the purpose of securing a meal; that some differences arose between Porter Mayfield and Steward Miller as to whether Mayfield had ordered "soups and salad" in connection with his meal; that a complaint was made, and subsequently under date of December 23, 1959, Carrier placed a charge against Claimant alleging that he used obscene and profane language to the Dining Car Steward and displayed a piece of cutlery in a threatening matter; that a hearing was held on January 12, 1960, and late a decision was rendered penalizing Claimant Mayfield by a suspension of fifteen days from his regular job. Claimant Mayfield contends further that he had an unfair trial — that all of the testimony offered by Carrier was in writing, not oral, and there was no opportunity afforded Claimant to cross examine witnesses making statements; it is further contended that Carrier failed to prove Porter Mayfield guilty of the charge beyond a reasonable doubt.

It is Carrier's position that the Claimant was properly advised that a hearing would be accorded him on the charge made that on October 4, 1959, he had used obscene and profane language to the Dining Car Steward and displayed a piece of cutlery in a threatening manner; that a hearing was held and Porter Mayfield was given an opportunity to be heard; that all the evidence has been reviewed and considered; that Claimant is guilty as charged in compliance with Rule 49 of the Agreement.

Petitioner's complaint that Mayfield has not been afforded a fair trial, because Carrier's presentation of testimony consisted entirely of written statements, affording Claimant no opportunity to cross examine the witnesses, is not impressive, as this Division is definitely committed to the policy that there is no obligation resting on the Carrier to produce its witnesses in person at any hearing, and, that there may be such testimony in writing is contemplated by Rule 51 of the Agreement.

With regard to Claimant's proposal that the Carrier has failed to prove Claimant Mayfield guilty of the charge made against him beyond a reasonable doubt, we might well review the testimony offered at the hearing to determine whether or not there was evidence, if believed, that would justify Carrier in arriving at such a finding —

Steward Sam Miller in his statement testified that Porter Mayfield had, among other things, ordered soup and salad but these items had not been put on his check; that while he, the Steward, was writing these items on his check, Mayfield protested, got up from the table and cursed him, using foul and obscene language (which appears in the record), that he, Mayfield, got up from the table and moved aggressively toward him and he, Miller, left the diner. Le Roy Stevenson, Dining Car Waiter, corroborating Miller, stated that he heard a loud argument taking place between Steward Miller and a Porter and though he was not able to distinguish the words being said, he did hear the Porter accuse the Steward of having overcharged him; Dining Car Waiter Reynold stated that he didn't hear the words but saw the Porter arise from his seat in what appeared to be a movement toward the Steward and the Steward immediately left the car.

Claimant Mayfield denies the statements of all of the above witnesses and insists that they are all lying; Mayfield, in fact, testifies positively that when Steward Miller returned to the diner with the train conductor, that he, Miller, cursed him, Mayfield, and shook a steel knife at him and threatened to cut his neck off. This statement is uncorroborated by anyone even though it is claimed by Mayfield that it was made by Miller in the presence of a number of witnesses who were employees. Mayfield did testify, however, that when he arose from the table, he made a motion towards his pocket to get his bill fold to pay for the food and that when Steward Miller saw this movement he ran from the dining car which is, at least, corroborative of the fact that there was some movement on the part of Mayfield which caused Miller to leave the dining car.

The veracity of the witnesses is involved in this dispute but throughout many awards it has been held that the question of the credibility of the witnesses is for the Carrier, and, also, the weight which should be attached to such testimony. There is no competent testimony that would justify Carrier in its finding that Porter Mayfield displayed a piece of cutlery in a threatening manner; however, there is ample competent testimony, of probative value, if believed, that justifies a finding that

Mayfield used obscene and profane language to Steward Miller. From a perusal of the record it can be readily ascertained that the words used by Porter Mayfield were profane and obscene. There is testimony that Mayfield made aggressive movements toward Miller. Except for the charge of Porter Mayfield displaying cutlery, the charge is in all other respects sustained by the evidence in compliance with Rule 49. For the foregoing reasons we are convinced that the Agreement was not violated.

Porter G. Mayfield was suspended from service for 15 calendar days. At the time the suspension was made effective he was on furlough. If it became necessary to recall him to active duty during the suspension he would be called but not permitted to work until the period of his suspension was terminated on February 23, 1960. From all the circumstances it does not appear that the discipline was too severe.

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 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 4th day of May 1962.