

Award No. 11547  
Docket No. PC-11619

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Donald A. Rock, Referee

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**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, respectfully claims for and in behalf of Conductor W. V. Freeman, Atlanta District, that in assessing Conductor Freeman's service record with a warning the Company acted arbitrarily and capriciously, and furthermore, the evidence of record does not substantiate the Company's action. Also, we charge that the Company failed to grant Conductor Freeman a fair and impartial hearing as required by the rules of the Agreement.

The Company would not permit the Organization to use public documents in support of its position.

We request that this warning be expunged from Conductor Freeman's record.

**OPINION OF BOARD:** This is a discipline case in which the service record of Pullman conductor W. V. Freeman, Claimant herein, was assessed with a "Warning" following a hearing at which he was tried and found guilty of the following charge, which he denied:

"You advised two passengers to make fraudulent applications for refund of railroad tickets, which you returned to them."

The charge was based entirely on the accusations contained in letters written by two passengers, Mr. George L. Green and Mr. E. Preston Calvert, who were officers of the Pullman-Standard Car Manufacturing Company. The first letter was written by Mr. Green to Mr. William H. Kendall, the Vice President and General Manager of the Louisville and Nashville Railroad Company. It was dated February 2, 1959, and reads in part as follows:

"Dear Bill:

Jack Scallan, Pres Calvert and I had a very unusual experience on the Hummingbird coming back from Birmingham. I thought you

would be interested in hearing the story that revolves around the three enclosed tickets.

You will note on each that the Chicago to Birmingham portion of the tickets was not picked up by the conductor on January 26th. If you will recall, the Pullman conductor picked up the tickets in your car soon after we left Birmingham on the 28th. On the morning of the 29th, I was awakened by the Pullman conductor with these remarks. He said that I could turn in the unused portion of the ticket and make some money. He further stated that I should say, when turning in the ticket, that I had driven to Birmingham. Pres Calvert got the same remarks and the only reason that Jack didn't was because his ticket was returned to me."

There is nothing in the record to show that the Louisville and Nashville Railroad Company took any action on Mr. Green's letter until on March 18, more than six weeks later, an officer of the Louisville and Nashville handed Mr. Green's letter together with the railroad tickets mentioned therein to Mr. G. W. Bohannon, President of the Pullman Company. Two weeks thereafter, on April 1, Mr. Green's fellow officer, Mr. E. Preston Calvert, wrote the following letter at Mr. Green's request to Mr. A. H. Lobeck, General Manager of the Pullman Company:

"April 1, 1959

Mr. A. H. Lobeck  
General Manager  
The Pullman Company  
165 North Canal Street  
Chicago, Illinois

Dear Mr. Lobeck:

At the request of our Mr. George F. Green, I am writing to tell you that I had the same experience that he did on returning to Chicago from Birmingham, Alabama, the night of Jan 28. On the morning of Jan 29, the Pullman conductor appeared at my room to return my roundtrip ticket, informing me that the ticket to Birmingham had not been removed. I told him that I had already been in Birmingham, but he said there was nothing he could do about it because he had no right to the ticket. He then suggested that I turn it in for a refund.

However, Mr. Green reported that he had the same experience, so I turned my ticket over to him and he reported the incident on his return to Chicago.

Very truly yours,

/s/ E. Preston Calvert  
E. Preston Calvert  
Director of Public Relations  
& Advertising"

Claimant through his organization processed this claim through all appropriate appellant levels on the property, and it is now properly before

this Division for determination. Claimant asks that the "Warning" be expunged from his record because he contends that he was not given a fair and impartial hearing, that the action taken by the Carrier was arbitrary and capricious and that the evidence in the record failed to establish guilt beyond a reasonable doubt as required by the Rules of the Agreement.

Rule 49 of the Agreement provides in part that "A conductor who has served his period of probationary employment (Claimant herein had done so) shall not be disciplined . . . without a fair and impartial hearing . . .". It also provides that "a decision to discipline shall be made only upon evidence in the record which establishes guilt beyond a reasonable doubt.

These Rules were written into the Agreement by the parties for the protection of the accused. The Rule requiring proof beyond a reasonable doubt has the effect of shielding the accused with the protective cloak of presumed innocence, which remains with him throughout the entire proceeding, and places upon the Carrier the burden of producing for the record, that high degree of proof required by the Rule.

In view of Claimant's contentions and his denial of the charge, it becomes our duty to make a careful examination of the record for the purpose of determining whether or not Claimant was accorded a fair and impartial hearing and whether the evidence in the record establishes guilt beyond a reasonable doubt as provided in the Rules.

Carrier's decision to discipline Claimant in the present case was based entirely upon the letters written by Mr. Green and Mr. Calvert, who, although they could not be required to attend the hearing and submit to cross examination, refused to attend, even though prior to the hearing the General Chairman of Claimant's organization requested and urged them to be present so that all of the facts could be fully developed. Claimant also requested the Carrier to request Mr. Green and Mr. Calvert to be present, but Carrier refused to do so on the grounds that the Rules did not require it to make such a request.

Implicit in the charge against Claimant are the following propositions: 1, that Claimant was the person referred to in Mr. Green's letter as "the Pullman conductor"; 2, that only one person was involved in the incident and that Claimant was that person; 3, that it was Claimant who returned the tickets, and it was Claimant who advised the passengers to make the fraudulent applications. It is obvious from the foregoing that it could not have been Claimant who gave the passengers the fraudulent advice unless it was he who returned the railroad tickets to them in the first place.

The railroad tickets referred to in the letters and in the charge were extra coupon tickets covering "one-way" railroad transportation from Chicago to Birmingham, which the ticket seller had issued in error and which he had erroneously attached to the passengers' valid coupon tickets, covering their railroad transportation for the round trip, Chicago to Birmingham. It was established at the hearing that the extra tickets had no monetary value.

On their return trip to Chicago, Mr. Green and his two associates left Birmingham on January 28 on a train known as the "Hummingbird". The first leg of their north-bound trip was from Birmingham to Nashville. The Pullman conductor on the "Hummingbird" picked up their railroad tickets

soon after they left Birmingham and turned them over to the railroad conductor. Claimant was not on that train.

On January 28 and for eight months prior thereto, Claimant was and had been the regularly assigned Pullman conductor on a train known as the "Georgian," which ran from Atlanta to Chicago, via Nashville and Evansville, and return. Claimant was the Pullman conductor on the "Georgian" on January 28, which left Atlanta on its north-bound trip to Chicago. On arrival at Nashville, a number of cars from the "Hummingbird," including the Pullman cars on which Mr. Green and his associates occupied space, were removed from that train and attached to the "Georgian," which then continued north to Chicago via Evansville. From Evansville to Chicago, the train was operated by the Chicago and Eastern Illinois Railroad Company.

The evidence of record clearly establishes the fact that railroad transportation on the "Georgian" going north from Atlanta to Chicago was never handled by the Pullman conductor; that on the north-bound trip it was always handled by the railroad conductor in charge; that he collected the railroad tickets from the passengers and returned all railroad tickets to the passengers on the "Georgian" north-bound trip.

The record shows that all railroad tickets collected or received by the railroad conductor out of Birmingham were by him turned over to the next connecting railroad conductor, and that all rail tickets previously collected were turned over to Mr. C. C. Walters, the Chicago and Eastern Illinois Railroad Conductor, who was in charge of the train from Evansville to Chicago.

The record contains a sworn statement signed by Mr. Walters in which he states that he "has no knowledge of giving Cond. Freeman any tickets to give back to passengers especially **Blank** tickets."

There is no competent evidence in the record to show that any railroad tickets were in Claimant's possession at any time during the trip in question.

We have concluded that the evidence in the record failed to establish Claimant's guilt beyond a reasonable doubt, and that Carrier's action in disciplining Claimant was therefore a violation of Rule 49 (i) of the Agreement. The claim should therefore be sustained and the "Warning" assessed against Claimant's record should be expunged therefrom.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

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AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.