

Award No. 12125
Docket No. PM-14014

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF SLEEPING CAR PORTERS
THE NEW YORK CENTRAL RAILROAD**

STATEMENT OF CLAIM: . . . for and in behalf of J. N. Day, who is now, and for several years past has been, employed by the New York Central System as a sleeping lounge car attendant operating out of the Chicago District.

Because the New York Central Railroad Company did, through Mr. M. Scavarelli, Supervisor of Personnel, exact disciplinary action against Mr. Day as a result of charges preferred against him, in which he was suspended from the service for a period of five (5) days, and in which it was further stated that the discipline (5 days) would be held in abeyance contingent on good conduct for a period of twelve months from date of letter of discipline, and should Mr. Day within that time be found guilty of misconduct of the same nature, the suspension applied would be made effective.

It is the contention of the Organization that said disciplinary action is a definite violation of the rules of the Agreement between the New York Central System and the class of employees of which Mr. Day is a part, represented by the Brotherhood of Sleeping Car Porters.

And, further, for this penalty to be set aside and expunged from Mr. Day's record.

OPINION OF BOARD: The facts are not in dispute. Claimant failed to discharge a passenger destined to detrain at Albany, New York. A hearing was held on January 3, 1963, and on January 8, 1963, Carrier's Supervisor of Personnel wrote to Claimant, in part, as follows:

"I have carefully considered all the evidence submitted at the hearing and in my opinion it shows conclusively that you are guilty of the above charge. In view of your responsibility in this matter, you are hereby suspended for a period of five (5) days. Application of this discipline is, however, held in abeyance contingent on your good conduct for a period of twelve months from the date of this letter. Should you within that time be found guilty of misconduct of this nature, the suspension applied herein will be made effective."

There is no question about Claimant's guilt of the offense charged. Petitioner contends only that there is no provision in the Agreement for the

type of penalty assessed. They argue that "whatever penalty to be exacted of Mr. Day should have been predicated upon the alleged offense of the time it happened. It is obvious that the disciplinary action taken against Mr. Day is not predicated on the offense alleged to have been committed in the letter of charge, but the discipline is predicated upon a hypothetical situation involving something that might happen in the future."

Petitioner also argues that because of the nature of the penalty Carrier's decision was not rendered within ten days after the hearing was concluded. We do not agree. The hearing was held on January 3, 1963 and the decision, as above set forth, was rendered on January 8, 1963, five days later. The mere fact that the five days' suspension was deferred for twelve months conditioned upon Claimant's good conduct within that period, does not violate Rule 31(a) of the Agreement. The decision was rendered within the ten days as prescribed in that Rule.

We find nothing in Rule 31(a) nor in any other Rule of the Agreement which prohibits Carrier from assessing a deferred penalty. It is conceivable that some types of deferred penalties may be arbitrary, willful or capricious. That is not the case here. See Award 11219 (Ray) involving the same parties, the same agreement and an identical issue.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.