

Award No. 12661

Docket No. PM-14446

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of C. Jones No. 1, who is presently employed by The Pullman Company as a porter out of the Chicago District.

Because The Pullman Company did finally, through Mr. R. J. Wurlitzer, Assistant to Vice President, Operating, sustain the disciplinary action taken against Mr. Jones under date of May 21, 1963, in a decision rendered by Superintendent R. G. Brewer wherein his record was assessed with a "warning".

Further because the charges upon which the disciplinary action was taken were not proved beyond a reasonable doubt as provided for in the Agreement between The Pullman Company and the porters, maids, attendants, and bus boys employed by The Pullman Company, which was and is presently in effect.

And further for the record of Mr. Jones to be cleared of the charge in this case, and for the disciplinary action that was placed against his record to be expunged.

OPINION OF BOARD: This disciplinary case arose from a passenger's complaint which led to charges placed against Porter C. Jones. According to a letter from Mr. Carl Haack to the President of the Southern Pacific Line dated January 29, 1963, the writer states that his wife and he received, "very unsatisfactory treatment" as first class passengers in Compartment F of Porter Jones' car on the trip from El Paso, Texas to Chicago, Illinois on December 27-28, 1962. Mr. Haack reported that after he complained to the Porter about the excessive heat in his accommodations, that employee reduced the temperature, but did not make the proper adjustment throughout the night so that the compartment became excessively cold. He also complained that there was a lack of water in this compartment and that Porter Jones failed to respond to his rings for service.

Carrier formally charged Mr. Jones with failure to operate properly the overhead valves in his car, to answer the call bell, and to submit a

report of complaints and unusual situations to the District Representative at the destination of the trip. After a hearing, Porter Jones was assessed a warning which was included in his record.

Claim is made on behalf of Mr. Jones that the penalty be expunged from his record because the charges were not proven beyond a reasonable doubt in accordance with Rule 49. Organization asserts that the minor disciplinary action in the form of a warning is indicative that the Carrier did not place much faith in the charges.

Porter Jones attributes the passengers' complaints to defects in the car over which he had no control. He supports this position with the statement that prior to the departure of the train from Los Angeles, an electrician on duty informed him that he was likely to have difficulty with the heating system. No corroboration of this statement is offered; but even if it were true, it still does not explain Mr. Jones failure to operate the overhead heating system manually, an alternative apparatus provided in the event of the breakdown of the automatic equipment. The record does not lead us to believe that the manual system was defective. In fact, there is reason to assume it functioned satisfactorily because, when first summoned by Mr. Haack with his complaint of excessive heat, Porter Jones reduced the temperature by turning the valves. He apparently failed to continue to make the necessary adjustments during the night, for the passengers complained of an uncomfortably cold night, and the next morning the Porter had to unfreeze the water in the trap. These factors contribute to our conclusion that the Porter did not properly maintain the manual controls.

Although Porter Jones states that he did not leave the car for the purpose of eating breakfast, he admits that he was absent to secure his coffee which he brought back to the car to drink. He says that he assumed another Porter guarded his station in his absence. It is clear from the record that the passenger did not receive a response to his calls for service in the morning and had to leave his cold compartment for a more comfortable location.

In the Book of Instructions with which each employe is provided, one regulation states that the employe is required to report incidents of an unusual nature to his District Representative at the destination of the trip. Although Mr. Jones admits that he was aware of the dissatisfaction and complaints of his passengers, he failed to make the required report of this unusual occurrence. His notification of the incident to the Conductor did not suffice to meet regulations.

From the fact that Carrier assessed the penalty of a warning only, we do not infer that it had any doubt as to the adequacy of the proof to the charges. The lack of severity of the penalty may have been the result of the consideration of such factors as past record and length of service of the employe.

In this disciplinary case our function is to determine if there was adequate, credible, and competent evidence to establish beyond a reasonable doubt whether Mr. Jones was guilty of the charges placed against him. We are of the opinion that there is such proof to support the charges. Accordingly we hold that the action of the Carrier was not arbitrary or unjust; and, therefore, we find that the Agreement was not violated.

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

The Agreement of the parties 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 19th day of June 1964.