



Award Number 17424

Docket Number MS-17552

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

T. D. DANIELS, SR.

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Pullman Company failed to grant me a fair and impartial hearing and I request all my rights be restored, including but not limited to vacation, seniority, health and welfare program, and compensation for all time lost.

Rules 49, 50 and 51 were violated by The Pullman Company in discharging me.

OPINION OF BOARD: After notice and hearing, Claimant was convicted of the charge that he had been insolent and discourteous and had failed to render proper service to two unrelated passengers and that he had used obscene language in communicating with one such passenger.

Claimant now appeals to this Board contending in essence that he was denied a fair and impartial trial and that the finding of guilty is not supported by substantial probative evidence in the record.

We have carefully reviewed the handling of this claim on the property and nowhere do we find Claimant objecting to any part of the proceedings on the grounds he was being denied a fair and impartial trial. Consequently, he cannot now, for the first time, raise such issue before this Board.

We have also reviewed the evidence consisting of complaint letters written by each of the passengers, a statement from Claimant's conductor, two statements from Claimant containing his version of the encounter with each passenger, and a transcript of Claimant's testimony at the hearing.

The complaint letters from the two unrelated passengers about their respective encounters with the Claimant tend to corroborate each other. Likewise, the statement of the Claimant's conductor corroborates one of the complaint letters. The Claimant's statements about his encounter with each respective passenger do not deny that the encounters actually occurred; rather they cast the encounters in a light favorable to Claimant. Moreover, Claimant's statements about each respective encounter conflict to some degree with his subsequent testimony at the hearing about such encounters.

Our review of the evidence thus leads us to the conclusion that the hearing officer was justified in giving more credibility to the statements of the passengers and conductor than to the statements and testimony of the Claimant.

Since the finding of guilty as charged is therefore supported by substantial probative evidence in the record the claim is denied.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.