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, claims for and in behalf of Conductor H. W.
Cundiff, Chicago District, that The Pullman Company acted arbitrarily and
capriciously when:

1. Under date of December 21, 1960, Conductor Cundiff was
discharged from the service of The Pullman Company.

2. The discipline administered (dismissal from the service of the
Company) was unjust.

3. The Pullman Company be ordered to reinstate Conductor Cun-
diff, with seniority and vacation rights unimpaired, and that he be
compensated for all time lost.

OPINION OF BOARD: The Claimant in this case was discharged for a
Rule G violation. Before proceeding to the merits there is one procedural
point which needs to be considered.

The Carrier contends that in light of the fact that nineteen months
elapsed between the appeal to the Carrier’s highest officer and the notice of
submission to the Board that this claim should be barred by laches. Laches is
a principle of equity and this Board has consistently held that it does not
have equitable powers. This does not mean that a claim may not be barred
by failure to comply with the Railway Labor Act. In this case there is no
time limit rule in the Agreement and without a time limit rule it is the
judgment of this Referee that the Carrier must do more than make a mere
assertion of laches here to bar the claim. If the claim had, in fact, been com-
pletely settled on the property, the Carrier should have submitted proof.

As to the merits, the Claimant was discharged after a hearing for being
under the influence of intoxicating beverages. A detailed setting out of the
evidence is not necessary, as there is sufficient evidence, if believed, to meet
the standard of reasonable doubt as set forth in the Agreement.
The Organization has objected to the introduction of a statement by an employe of the Carrier without having this employe available for cross examination. An analysis of the statement of the primary accuser who was present, shows that the second statement was merely corroborative of the statement of the primary accuser. It is, therefore, our judgment that since there was no new evidence in the statement and as the second employe was not "immediately available" the Carrier did not violate the Rules of the Agreement.

The Organization has urged that the penalty attached here is arbitrary and capricious and has pointed out the large number of commendations the Claimant has received. However, in light of the fact that the Claimant had, within the previous two years, received a suspension of sixteen days for violation of the same rule, we cannot state that the Carrier was arbitrary and capricious.

**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 not violated.

**AWARD**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schults
Executive Secretary

Dated at Chicago, Illinois, this 8th day of August 1963.