

Award No. 978

Docket No. 976

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim for and in behalf of R. Gillespie, who was formerly employed by the Union Pacific Railroad Company as a chair car attendant operating out of Denver, Colorado.

Because the Union Pacific Railroad Company did, under date of August 24, 1953, take disciplinary action against R. Gillespie by discharging him from the service upon charges unproved; which action was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for R. Gillespie to be returned to his former position as a chair car attendant for the Union Pacific Railroad Company with seniority rights and vacation rights unimpaired, and for him to be paid for all time lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: The question before the Board in this docket is whether or not the disciplinary discharge of Claimant R. Gillespie was based upon the fair hearing guaranteed him by Rule 27 of the governing agreement.

There is no charge that the manner of the hearing was unfair; but rather it is argued that the management's decision was unfair, because it was based on contradictory testimony of only the claimant and the inspector involved, and that to hold by inference, in such instance, that the employe is not telling the truth, and that the inspector must be believed in full, is essentially unfair.

This Board is of the opinion that the argument is not valid because it fails to take into account the self interest of the individuals involved and further because reversing the company decision would simply reverse the argument and would in effect hold that the claimant must be believed and inferentially that the inspector must be telling an untruth.

It is a settled rule of this Board that unless the carrier's action is unjustly discriminatory, arbitrary or capricious, or is not fair and impartial, we may not intervene to substitute our judgment for that of a carrier, which is granted by contract the right to discipline.

We have examined the transcript of investigation in this docket and have taken particular note of the following significant portions:

CHAIR CAR ATTENDANT GILLESPIE:

- Q. You do admit you touched him?
- A. Yes sir, because of the motion of the train.
- Q. How about the second time?
- A. There was no second time.

CONDUCTOR SMITH:

- Q. Mr. Smith, you have heard the charges made by Mr. Falsetti. I would like to have you tell me in your own words what took place at this time and date in question.
- A. On one of his trips through the coaches he told me who he was, and I knew who he was anyhow, and that part of his job was to go through the coaches and look them over. I told him to go ahead. A little later on he came back while I was peddling Denver tickets and told me that he had an argument with Porter Gillespie in the head end of the train and Gillespie had pushed him twice and told him he didn't have no business there and to get back where he belonged. When I got through with my work, I asked Gillespie about it and Gillespie told me that he didn't push him, that he bumped up against him twice while he was cleaning the smoker, I thought it was, but I am not sure what it was. I wasn't up there while the occurrence was going on. He said he bumped him twice because Mr. Falsetti was in the way. I told him, "You bumped into the wrong man". That is all there is to it. (Underscoring ours).

CHAIR CAR ATTENDANT GILLESPIE:

- Q. Did you report an altercation to the conductor?
- A. He came and asked me about it and I explained it to him.

CONDUCTOR SMITH:

- Q. Mr. Smith would you state for the record what Mr. Gillespie told you about this altercation?
- A. I met Gillespie in one of the smokers, and I said "Did you push that dining car inspector around", and he said "No, I bumped into him". Here is a note I had in my train book: "Dining Car Inspector had run-in with Porter Gillespie. Mr. Falsetti claimed Gillespie pushed him twice". That is what is in my train book. I told him "You pushed the wrong fellow". (Underscoring ours).

From all of which it appears that the carrier's investigation was full and complete and that the inspector's story is verified by the uncontradicted testimony of the conductor.

Accordingly, we are of the opinion that the petitioner has not proven a violation of the rules and that the investigation and decision by the carrier were fairly administered under the rules.

FINDINGS: The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Illinois, this 4th day of June, 1954.