

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Third Division**

Arthur M. Millard, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF SLEEPING CAR PORTERS**

**THE PULLMAN COMPANY**

**STATEMENT OF CLAIM.—**

"The particular question herein involved is the denial of the seniority rights, by the Pullman Company, to the following named porters, all employees of the Pullman Company operating out of the San Antonio, Texas, District:

"George W. Rainey, J. B. Caviness, A. Blocker, A. A. Jackson, E. Walker, W. Williams, Sam Hall, L. Tyler, W. Floyd, Joe Ellis, and W. Flowers."

**STATEMENT OF FACTS.—**In their ex parte submission the employees stated the facts as follows:

That G. W. Rainey and ten others specified in the statement of claim are now and have been in the service of the carrier and have established seniority ratings in the San Antonio District according to their period of service. These men have been displaced from their former regular assignments and have been forced on the extra list, although six porters junior in service hold regular assignments on Line 3301—No. 1.

That Superintendent of San Antonio District has denied claimants right to exercise seniority on Line 3301—1, which operates over M. P. R. R. from St. Louis to Mexico City, with San Antonio District porters between St. Louis and Laredo, Texas, because it is an International line and carrier and M. P. R. R. desire to use porters of Mexican extraction and does use six such porters in the line, all of whom are junior to one or more of the claimants.

That the District Superintendent did not permit claimants to operate on Line 3301—1 because they did not possess the required "fitness and ability" to speak the Spanish language.

There is in evidence an agreement between the parties, effective June 1, 1929, Rule 5 (b) of which reads:

"An employee displaced from his regular assignment may bid for any other assignment where his seniority is greater than that of the junior employe on such assignment. Fitness and ability being sufficient, he shall be assigned to the run."

The carrier stated the facts as follows:

On September 19, 1923, the operation of sleeping cars in Line 3301 between St. Louis and Laredo, Texas, routed via M. P. trains 1 and 2 and connecting railroads, was resumed. Passengers en route to Mexico City and intermediate points in the Republic of Mexico were required to transfer at Laredo into Pullman cars operated by the National Railways of Mexico.

Sleeping car Line 3293 was in operation between St. Louis and San Antonio, Texas, on M. P. Trains 5 and 6 and connecting railroads.

These lines were largely patronized by passengers of Mexican lineage en route to and from the Republic of Mexico. Complaints arose of unsatisfactory service of porters assigned to the two lines on account of inability to speak the Spanish language and lack of knowledge of the customs and habits of the Mexican people who patronized the cars.

Vigorous effort was being made by the railways and the Pullman Company to popularize the service between St. Louis and Mexico via Laredo to attract travel. To add to the comfort and convenience of passengers and on account of prior complaints, the carrier, in February and March 1924, placed on these lines experienced porters who were Mexican born or of Mexican descent and capable of conversing in both Spanish and English. Spanish-English speaking Mexican

**OPINION OF BOARD.**—The subject at issue in this claim is the denial by The Pullman Company of the seniority rights of certain Pullman sleeping car porters as specifically named in the statement of claim, and holding seniority rights in the San Antonio District, Texas, on the application of the requirements of *fitness and ability, as determined by the inability of the claimants to speak Spanish*; and the assignment by the carrier of porters junior in the service, but who are able to speak Spanish, to cars operated between St. Louis, Missouri, and Mexico City, Mexico.

In their submission the carrier states that "the sole question in dispute is 'fitness and ability' of claimants"; while the further statement is made that "In the event any of the eleven claimants would qualify for the requirements of line 3301 now held by junior porters, he would be eligible to displace any of the present junior porters."

The employees base their contention on the application of Rule 5(b) of the agreement between the Parties, effective June 1, 1929, and in which the fitness and ability of the applicant or employee is of equal importance with seniority, and no exceptions are made as to lines, runs, or locations in specified districts.

In the rules and decisions submitted in this claim no reference is made to the ability of porters to speak any particular tongue, and in the application of the term "fitness and ability" as specified in the rule, and in the absence of any particular qualifications or specified requirements as to the speaking of tongues, *the fitness and ability of the claimant in that direction would properly be determined by his ability to intelligently and courteously receive, discuss, and confirm orders and instructions from his superior officer or officers, in the language of the country or state in which the employment was secured; in which the employer was located, or in which the service originated.*

In the opinion of the Board the fitness and ability of a sleeping car porter, as properly interpreted by the rule, is measured by the competency and aptitude of the individual in performing the work required by the position in which he is placed; to receive, confirm, and obey orders from the proper authority as they pertain to that work, and to fulfill promptly and efficiently the duties ordinarily required of a Pullman car porter.

The question of the fitness and ability of these claimants as porters was undoubtedly determined as to these qualifications when they were originally qualified for appointment; and which has continued to be ratified by their employment as porters over a period of years. Under these conditions, in the opinion of the Board, the claimants are entitled to exercise their seniority rights to the service in question and in the district in which their seniority is held.

**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 the disqualification of petitioners because of their inability to speak the Spanish language is not contemplated by the term "fitness and ability" as used in the rule.

#### AWARD

That the petitioners named in this claim be allowed to exercise their seniority to displace junior porters in the service in question and in the district in which their seniority is held.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
Secretary

Dated at Chicago, Illinois, this 23rd day of September 1937.