

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY

STATEMENT OF CLAIM: "For and in behalf of Alzo Palmer, a sleeping car porter employed by The Pullman Company in the District of St. Louis, Missouri, because The Pullman Company did on March 21, 1938 take disciplinary action against Porter Alzo Palmer, which action was unjust and in violation of and contrary to the Agreement now in force between The Pullman Company and its porters, attendants and maids, and for Porter Palmer to have this disciplinary action cleared from his record and be compensated by pay for all time lost, by reason of the aforementioned disciplinary action."

EMPLOYES' STATEMENT OF FACTS: "Your Petitioner, The Brotherhood of Sleeping Car Porters, respectfully submits that it is the duly designated and authorized representative of all porters, attendants and maids employed by The Pullman Company under the provisions of The Railway Labor Act.

"Your Petitioner further represents that in such capacity it is duly authorized to represent Porter Alzo Palmer of the St. Louis, Missouri District.

"Your Petitioner further represents that under date of March 11, 1938, Porter Palmer was notified by Superintendent L. P. Hanson of the St. Louis, Missouri District that he would be granted a hearing on the charge that he (Porter Palmer) was incompetent to perform the duties of porter-in-charge as indicated by his (Porter Palmer's) failure to properly handle in-charge work, as required by the existing instructions, during the period October 31, 1937 to January 17, 1938.

"Your Petitioner further represents that as the duly authorized representative of Porter Palmer it sent a letter to Superintendent L. P. Hanson asking for the specific charge or charges against Porter Palmer as is provided for in the rules of the contract now in force between The Pullman Company, its porters, attendants and maids. The Petitioner further represents that Respondent Company failed to give the specific charge or charges against Porter Palmer.

"Your Petitioner further submits that a hearing was held before Superintendent Hanson on this charge on March 18, 1938, and that Porter Palmer answered the specific charges, presented for the first time in this hearing, to the best of his ability.

"Your petitioner further submits that this hearing was unfair, Porter Palmer not being given the specific charges against him.

"Your Petitioner further submits that at least one of the charges presented against Porter Palmer had been made against him in another case and penalty was assessed against him on that charge.

Agreement now in force', etc. We submit that the exercise of good judgment and good management on the part of the Company in withdrawing an employe from a class of service for which he had shown himself unfit, and returning him to the ranks of the class of employes from which he had been recruited, is not 'in violation of and contrary to the Agreement'. The evidence brought out in the hearing, as disclosed in the minutes, clearly demonstrates that porter Palmer is not fitted to work as a 'porter-in-charge'.

"Porters are assigned to service in accordance with their seniority provided they have the required fitness and ability, as shown by the following quotation from Rule 45 of the Agreement with Porters, Attendants and Maids:

'Assignments to regular service, by bulletin or displacement, shall be made on the basis of seniority, fitness and ability; fitness and ability being sufficient, seniority shall govern.'

"Having demonstrated his unfitness and lack of ability to handle the work of a porter-in-charge in accordance with instructions, porter Palmer no longer was eligible for such an assignment; consequently he was withdrawn from 'in-charge' operation. He then secured assignment in a line not operated as 'porter-in-charge' and has been continuously operating in such lines since his withdrawal from porter-in-charge work.

"The evidence submitted and developed in the hearing before Superintendent Hanson on March 18, 1938, is convincing and completely justifies the action taken by this Company in removing Alzo Palmer from operation as a porter-in-charge because of his failure to handle work of that character in the proper manner. His grievance that his employer has taken disciplinary action which 'was unjust and in violation of and contrary to the Agreement' is not justified, and he is not entitled to 'have the disciplinary action cleared from his record and be compensated for pay lost by reason of the aforementioned disciplinary action', as the petitioner has claimed.

"The Third Division of the National Railroad Adjustment Board has repeatedly held that in the absence of clear abuse of discretion it shall not interfere in the control by the employer over the employe. There has been no abuse of discretion in this instance."

OPINION OF BOARD: The Petitioner contends:

(1) That the discipline was not warranted, because of violation of Rule 50, in that Palmer was not notified of the specific charge against him;

(2) Therefore, the record of discipline should be removed from Palmer's record and he should be compensated for time lost as a result of the discipline administered;

(3) That the Superintendent's action in permanently withdrawing Palmer from in-charge service, effective March 21, 1938, was contrary to the provisions of Rule 45.

Based on the record, the Board holds:

(1) The Carrier complied with the provisions of Rule 50 when, under date of March 11, 1938, Superintendent Hanson notified Palmer of the time and place of hearing and the specific charge. . . .
 "* * * you are incompetent to perform the duties of porter-in-charge * * *." See Third Division Award 562.

(2) The discipline being warranted, the request that the record of discipline be removed from claimant's record and that he be compensated for time lost, should be denied.

(3) The Carrier's action in permanently withdrawing Palmer from porter-in-charge service was contrary to the provisions of Rule 45.

Palmer is entitled to consideration for such assignment and should be allowed the opportunity to qualify under the provisions of Rule 45.

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 employe involved in this dispute are respectively carrier and employe 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 discipline assessed was warranted and not in violation of the Agreement. *Therefore, request for removal of record of discipline and compensation for time lost should be denied.* Palmer is entitled to consideration for porter-in-charge service and should be allowed the opportunity to qualify under the provisions of Rule 45.

AWARD

Request that record of discipline be removed and that Palmer be compensated for all time lost is denied.

Palmer shall be given consideration for porter-in-charge service as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of August, 1938.