

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY**

STATEMENT OF CLAIM: "For and in behalf of Attendant D. B. Pascual of the Chicago District Commissary of the Pullman Company because of the denial by the Pullman Company of the right of Attendant D. B. Pascual to exercise his seniority in the Chicago District Commissary, as is provided for under the agreement now in force between the Pullman Company and Porters, Attendants, and Maids in the service of the Pullman Company in the United States of America and Canada, represented by the Brotherhood of Sleeping Car Porters."

EMPLOYEES' STATEMENT OF FACTS: "Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is the duly authorized and recognized representative of all Pullman Porters, Attendants, and Maids in the employ of the Pullman Company, under the provisions of the Railway Labor Act.

"Your petitioner further represents that in such capacity it is the duly authorized representative of D. B. Pascual, an attendant who is now and for the past several years has been employed as an attendant by the Pullman Company, operating out of the Chicago District Commissary.

"Your petitioner further sets forth that Attendant Pascual operated on line No. 5150 and was removed from that particular line because the management of the Pullman Company maintained that he could not speak and understand the English language fluently enough.

"Your petitioner further represents that Attendant Pascual has made application to operate as an attendant on various lines in the Chicago District Commissary; but that he has not been allowed to work on such lines because, as aforementioned, the management maintains that he does not speak and understand the English language sufficiently for that work.

"Your petitioner further represents that there are other attendants of younger seniority than Attendant Pascual who are now operating as attendants in the Chicago District Commissary.

"Your petitioner further represents that under the date of December 22, 1937, Attendant D. B. Pascual, through his duly authorized representative, the Brotherhood of Sleeping Car Porters, made inquiry of S. E. Mitchell, the representative of the Pullman Company in the Chicago District Commissary, as to why Attendant Pascual was not allowed to exercise his seniority rights as an attendant in the Chicago District Commissary; and in reply was advised that Attendant Pascual did not have the fitness and ability, by reason of the fact that he could not speak and understand the English language fluently.

"Hearing on this matter was held before District Commissary, S. E. Mitchell, on January 8, 1938 and after hearing District Commissary, S. E. Mitchell advised that Attendant D. B. Pascual had not been given certain

qualify for service where he is required to carry on conversation with passengers to ascertain their wants and properly serve them.

"There has been no 'denial by The Pullman Company of the right of Attendant D. B. Pascual to exercise his seniority in the Chicago District Commissary'. As previously stated, he is at present operating as attendant performing cook's work in line 1224 between Chicago and Hoboken, and since his entry into the Pullman service on January 10th, 1934, he has enjoyed regular employment in those assignments where his seniority, fitness and ability qualified him to operate. While his seniority credit has been fully recognized, as outlined in that section of Rule 45 previously quoted the matter of seniority is not the sole factor governing assignments to service. In filling assignments the management must necessarily not only give consideration to the seniority rights of applicants, but also as a matter of protection to its patrons and service, be reasonably assured that the person assigned is possessed of sufficient fitness and ability properly to qualify for the assignment he is awarded.

"We have shown that Pascual has never filed a formal bid for assignment as an attendant. We have also shown that he has been regularly employed in runs he has been considered qualified to fill. As we have, therefore, demonstrated that Pascual has not been denied the right to exercise his seniority in the Chicago District Commissary, his claim should be denied."

OPINION OF BOARD: Petitioner alleges the Pullman Company has denied Attendant Pascual the right to exercise his seniority in the Chicago Commissary District. At the hearing of the case, August 1, 1938, it was established that Attendant Pascual, some two weeks prior to date of the hearing, was assigned by the Carrier to position of attendant (kitchen duty) on car in line between Chicago and Minneapolis. While this car is a two-man assignment, it was shown that at certain times Pascual performs both kitchen duty and waiter or attendant service. By assigning Pascual to such service, on or about July 15, 1938, the Carrier recognized his qualification for the position of attendant, and he shall hereafter be permitted to exercise his seniority on Attendant assignments, subject to the provisions of the agreement.

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 by assigning Pascual as attendant on the Chicago-Minneapolis line, the Carrier recognized his qualification for position of attendant, and he shall hereafter be permitted to exercise his seniority on Attendant assignments, subject to the provisions of the agreement.

AWARD

Claim sustained as indicated by 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.