Award No. 1993
Docket No. PM-1976

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: For and in behalf of Clyde Pharis who was formerly employed by The Pullman Company as a Porter, operating out of the district of Shreveport, Louisiana. Because The Pullman Company did, under date of November 3, 1941, discharge said Clyde Pharis from his position as a Porter in above mentioned district, in violation of the rules of the agreement between The Pullman Company and its Porters, Attendants, Maids and Bus Boys then and now in force. And further, because The Pullman Company did subsequently, under date of December 12, 1941, deny the claim of the Brotherhood of Sleeping Car Porters calling for the return of said Clyde Pharis to the position of Porter in the above mentioned district. And further for the said Clyde Pharis to be returned to his former position as a Porter in the district above referred to with pay for all compensation lost and with restoration of all rights deprived of by reason of having been discharged in violation of the agreement above mentioned.

EMPLOYES' STATEMENT OF FACTS: Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is duly authorized to represent all Porters, Attendants, Maids and Bus Boys, as it is provided for under the provisions of the Railway Labor Act.

Your petitioner further sets forth that in such capacity it is duly authorized to represent Clyde Pharis who, until November 3, 1941, was employed by The Pullman Company, operating out of the District of Shreveport, Louisiana, as a Porter.

Your petitioner further sets forth that under date of November 3, 1941, Clyde Pharis was discharged from the service of The Pullman Company in said Shreveport, Louisiana District by Agent Boldridge, the representative of the management in said District.

Your petitioner further sets forth that it did, under date of November 7, 1941, file a claim with respondent Company, for and in behalf of Clyde Pharis, charging the Company with violation of the agreement between The Pullman Company and its Porters, Attendants, Maids and Bus Boys, in that Pharis was arbitrarily discharged without being given a hearing as provided for under Rule 50 of said agreement. And further contending for Pharis to be restored to his former position as a Porter in said District with compensation for wage loss occasioned by said discharge.

Above mentioned Claim being denied by Agent Boldridge of the Shreveport, Louisiana District, appeals were taken from Agent Boldridge's decision through the regular channels, up to and including Mr. B. H. Vroman, Assistant to the Vice President, The Pullman Company, the last officer designated

This position is indeed strengthened by the latter half of the last sentence of Rule 65, which provides that even should an employe not be satisfied with the reasons advanced by the Management, he cannot contest their merit on appeal.

To place the interpretation on Rule 65 suggested by the Organization in this case would be to disregard completely the fundamental difference between a probationary employe and one who has completed his period of probationary employment. If the Organization's position reflects the intent of the parties there would have been no occasion to have written a rule providing for a probationary period of employment. We submit this claim clearly involves no violation of rule and it should, therefore, be denied.

OPINION OF BOARD: Clyde Pharis was formerly employed by The Pullman Company as a Porter out of the district of Shreveport, Louisiana, and was discharged on November 3, 1941. His position was that of a probationer, having been employed slightly less than six months prior to his discharge. He comes here complaining that his discharge was arbitrary, without a hearing and in violation of Rules 50 and 65 of the Agreement.

Rule 65 provides for a probationary period of six months' employment which is intended to be a sufficient time to determine the competency of an employe. The rule also provides that within the probationary period the service of an employe may be terminated for any cause; that he shall have a right to a hearing in accordance with the provisions of Rule 50, but shall not be privileged to appeal therefrom. Rule 50 provides that an employe shall not be disciplined, suspended or discharged without a hearing.

Just before the end of his probationary period Pharis received the following letter from an agent of The Pullman Company. "As your performance of the duties of the position has not been satisfactory to the Management, your services as Porter will not hereafter be required." It is apparent in this case that the carrier has violated two sections of the rules. Rule 65 does not provide that probationary employment may be terminated without cause. Its provision is that it may be terminated "for any cause." Rule 50 provides that an employe shall not be discharged without a hearing. Probationary employes are not excluded from the operation of this rule.

Pharis was entitled to an assignment of cause and to a hearing thereof. It may be, as urged, that that part of Rule 65 precluding an appeal makes such a hearing an empty gesture, but we cannot decide this point. The order might have been different if a charge had been made and a hearing held, or the employe might have obtained such information and guidance or some minor discipline which would have permitted him to remain in service.

It is the claim of the employe in this case that he should be returned to his former position as a Porter in the district above referred to and paid for all compensation lost and with restoration of all rights he was deprived of by reason of his having been discharged in violation of the agreement above mentioned. Rule 50 on which the claimant relies expressly provides that an employe may be held out of service pending an investigation. To reinstate him as of that date would be to carry his period of employment past the probationary period and deprive the employer of the provisions of Rule 65. It is necessary that the case be referred back to the Company and the claimant be given the benefit of the provisions of Rule 50 and his status redetermined as of date of discharge as provided in Rule 50 and subject to the provisions of Rule 65. On such hearing the Company will state its cause for discharge and give the claimant an opportunity to be heard. Some question has been raised on this hearing as to whether or not such procedure is an empty gesture because of the provision in Rule 65 that a probationer has no privilege of appeal. We cannot pass upon that question at this time but must assume that a fair hearing will be had and an order entered that will be satisfactory to both parties.

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 case should be referred back to the Company for the purpose of stating cause for discharge and according the claimant the hearing in accordance with the provisions of Rule 50.

AWARD

That the case should be referred back to the Company for the purpose of stating cause for discharge and according the claimant the hearing in accordance with the provisions of Rule 50.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of September, 1942.