

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 G. Ryan who is now, and for a number of years past has been, employed by The Pullman Company as an Attendant operating out of the New York Central District of New York City. Because The Pullman Company did, under date of October 27, 1941, penalize Attendant Ryan by giving him thirty (30) days actual suspension on charges unproved; which penalty was unreasonable, unjust, arbitrary and in abuse of the company's discretion.

And further, for the record of Attendant Ryan to be cleared of the particular charge and for him to be reimbursed for the wages lost by virtue of having been so penalized.

OPINION OF BOARD: The question for decision in this case is whether the Attendant, G. Ryan, was guilty of wilfully deserting his assignment and refusing to go out when he should have gone out on a run from New York to Niagara Falls, or whether the case is merely one of misunderstanding between various employees. Some facts are necessary to consider in addition to those involved in the immediate occurrence. On July 2, 1941, Ryan, who rated the position of Attendant on a buffet car, left New York for Chicago. From Chicago he was immediately sent to Tampa, Florida and immediately returned from Tampa, Florida to Chicago on another run, and arrived in Chicago on July 9th. He was immediately deadheaded to New York where he arrived on the morning of the 10th, but had not been given a berth or any place to sleep until past midnight. There is some but very little dispute as to what happened after his arrival in New York and the variations in the statements of various parties, which are slight, but important, will presently be noted. Upon Ryan's arrival in New York he went to the sign-out man and was requested to double out that evening on a train for Niagara Falls. Ryan said that he was very tired from several days continuous duty and he wished they would get some one else to take the Niagara Falls run, and he was told that they would try to do so. He was told to call back in the afternoon and that they would let him know. He did call the office between 1:30 and 3:00 P.M., and some one told him that he would have to go out on Train No. 29 for Niagara Falls that evening. At this point in the evidence occurs the only discrepancy. The employe of the Pullman Company who was making the assignments said that he would have to go out as a bus boy, which is a lower classification, while Ryan says that he was only told that he would have to go out on that train.

When he arrived at the Station Ryan found another Attendant in charge of the car on which he was expected to go out, and it seems he told the Attendant that he, Ryan, was Attendant and he expected to take charge of

the car. The Attendant in charge told Ryan that he must be mistaken because he himself had been assigned to take charge of the car. The Night Agent, who appears to have been the responsible person for handling the final train arrangements, came through the train and Ryan spoke to him about the matter, and he was told that he was expected to go out as bus boy. This Night Agent failed to settle the controversy by giving final and positive directions, but agreed that Ryan might go and call the yard office. Ryan states that he did go and call the yard office but couldn't get anybody there, and the train went without him. Ryan had been but newly promoted to the position of Attendant and during the time he had been bus boy and assigned to duty as an Attendant he had always received Attendant's pay. He apparently took it for granted that if he served as bus boy while holding the position of Attendant he would only receive bus boy's pay. It seems quite clear from the rest of the record that Ryan was mistaken about this and had he gone out as bus boy on this run he nevertheless would have received Attendant's pay.

The Relief Night Agent, J. D. Fein, says that he told Ryan he would have to go out as bus boy even if he was an Attendant, and that regardless of what he was carried on the payroll he would have to help the Attendant on this trip. This agent further said that Ryan wanted to call the yards, and as there was about 30 minutes time he saw no harm in doing so; that he instructed Ryan to see him after he had called the yards and that he intended to get back to the train before it left but he did not do so; that he did not give Ryan any permission not to carry out the assignment he received and gave him no permission to be relieved.

Ryan's only excuse for not going out on the trip is his statement that "I believed that I would be paid at the bus boy's rate, and since that was the only job on the car, I did not make the trip."

A careful review of all the circumstances indicates that Ryan probably misunderstood the situation and that the Night Agent was somewhat less diligent than he might have been in making the situation clear. Ryan was undoubtedly very tired and perhaps in no very good frame of mind following his 10 days of extraordinary strenuous service, i. e. from New York to Chicago. From Chicago to Tampa, from Tampa to Chicago, from Chicago to New York without any time off. He had only recently been made an Attendant and may have been suffering from a little feeling of superiority on that account and probably was jealous of his new position as compared to his former one of bus boy. It appears from the record that Attendants were required to take charge of their cars at an outlying point in the yards and ride them in to Grand Central Station, whereas bus boys reported for duty at the station. Ryan reported at the station, which would indicate that he knew before he came down that he was expected to go out as bus boy. It is possible that he thought sign-out office would find some one to take his place, possibly at the last minute, and that he would be able to avoid the trip or that he might be sent out as Attendant on that car or some other. Probably he figured that if he made that trip as bus boy he would be paid bus boy's wages and might have to continue the practice. The Night Agent was lax in giving him permission to telephone the yard office, thus indicating the possibility of some misunderstanding or the possibility of Ryan being relieved from the trip. Had he told Ryan to stay on the car and made it clear to him that he would receive Attendant's wages this controversy would have been avoided.

After considering the entire record we are of the opinion that Ryan is not entirely free from fault and that he was entitled to some discipline. The discipline imposed, which amounts to approximately \$100 fine was undoubtedly severe and greater that the facts would seem to justify. However, this Board has frequently held that it will not interfere with discipline unless it is so harsh as to appear capricious, or has been arbitrarily or unreasonably imposed. This Board could not carry on its duties in carrying

on its work for all employees and carriers if it could be called upon to weigh and measure the exact number of days that any employee might be suspended. We do not feel that this case presents such an unreasonable discipline as to justify our interference.

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 employee involved in this dispute are respectively carrier and employee 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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of October, 1942.