Award No. 3140
Docket No. PM-3243

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of F. S. Snow who was formerly employed by The Pullman Company as a porter operating out of the district of Washington, D. C.

Because The Pullman Company did, under date of November 29, 1944, notify F. S. Snow that he was considered out of the employment of The Pullman Company and was so recorded in the Company's employment records; which action in eliminating Mr. Snow from his position as a porter was unjust, unreasonable and in violation of the provisions of the agreement between The Pullman Company and its porters, attendants, maids and bus boys represented by the Brotherhood of Sleeping Car Porters.

And further, for F. S. Snow to be restored to his position as a porter in the Washington, D. C. district with his seniority unimpaired and with pay for time lost as a result of having been eliminated from his position as a porter as above set forth.

OPINION OF BOARD: As we view this case, the sole issue is: "Was the Carrier justified, on the facts that appear in the record, in removing employe from service under the provisions of Rule 61 of the Agreement?"

That rule reads:

> "An employe absent from work without permission for a period in excess of seven (7) days shall be considered out of the service, unless a satisfactory explanation is given."

We do not believe that Rule 50 is applicable to the facts in this case. Rule 50 sets forth the procedure for a hearing in the event an employe is disciplined, suspended, or discharged. Rule 61, on the other hand, has reference to the removal from service of an employe who has absented himself from work without permission for a period of seven (7) days without a satisfactory explanation.

Under Rule 61, employe is fully protected from an arbitrary removal from service by Carrier, for thereunder, employe is given the positive right of offering a satisfactory explanation. Even after employe absents himself from work in excess of seven (7) days, Carrier would not be justified in taking employe out of the service if employe is able to provide a satisfactory explanation. But the rule clearly requires that the employe must furnish the satisfactory explanation.

That explanation has not been provided in this case. Although employe contends that on November 6, 1944 or the day following, he reported sick, we do not believe the record substantiates this contention.

The record indicates that Carrier attempted to contact employe several times during November 1944, both at his home, and at a gas station which he was operating, but without success. Although employe asserts that he was sick during November 1944, we do not believe that claim has been sustained. Rather, we are of the opinion that he was doing outside work and did not comply with Rule 61 in providing a satisfactory explanation for his absence. Employe had the opportunity to get his complete story into the record when Carrier offered to conduct a hearing but Brotherhood declined the offer in his behalf.

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 Employes involved in this dispute are respectively carrier and employes 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 Carrier did not violate the Agreement.

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 March, 1946.