

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

**STATEMENT OF CLAIM:** \* \* \* for and in behalf of E. D. Moten who was formerly employed by The Pullman Company as a porter operating out of the district of Kansas City, Missouri. Because The Pullman Company did, under date of March 9, 1945, discharge Mr. Moten from his position as a porter in the Kansas City, Missouri district on charges unproved; which action was unjust, unreasonable, arbitrary and in abuse of the Company's discretion.

And further because Mr. E. D. Moten did not have a fair and impartial hearing as provided for in the agreement between The Pullman Company and the Porters, Attendants, Maids and Bus Boys employed by The Pullman Company in the United States of America and Canada, represented by the Brotherhood of Sleeping Car Porters.

And further, for Mr. E. D. Moten to be returned to his position as a porter in the Kansas City, Missouri district and for him to be paid for all time lost as a result of this unjust and unreasonable action on the part of The Pullman Company.

**OPINION OF BOARD:** This is a discipline case in which a Pullman porter after dismissal from service by the Carrier seeks reinstatement with pay for all time lost.

The rule is well settled that this Board will not substitute its judgment for that of the Carrier in a case of discipline. Only where the finding is so clearly wrong as to constitute an abuse of discretion will we interfere (Award 891). This, however, is such a case.

It is important to bear in mind the exact offense which the carrier charged against the claimant on which a hearing was given him:—that he did not keep his car in a clean and orderly condition when instructed by the Pullman conductor to do so, and that he refused to comply with specific instructions of the Pullman conductor and the train commander to perform his prescribed duties, which action necessitated his removal from his assignment upon arrival of the train at Kemmerer, Wyoming. The underlined portion of the above is important because there is some suggestion made in the record that the claimant in leaving the train voluntarily abandoned his post of duty, an offense which is not even charged against him. The offense is the failure to perform his duties. Because of that the carrier removed him from the train.

The record before us is approximately eight hundred pages long. Though there is much irrelevant matter in it with charges and counter charges the essential facts are reasonably clear. After a careful reading of it we are satisfied that we have a very accurate picture of what took place.

Between the dates of January 8-11, 1945 an important troop movement took place between Smoky Hill, Kansas and Seattle, Washington. It was required that the operation should be secret as the men were destined to a port of embarkation for service against the Japanese. The train in question was composed of thirteen cars, two baggage cars, two kitchen cars, and nine Pullman sleepers in charge of Pullman conductor, H. W. Johnson. The train was operated by the Union Pacific Railroad, and at the time of the trouble with which we are concerned was in charge of Union Pacific train conductor, H. Henckel. Accompanying the train on the entire trip was train escort, M. A. Collier, representing the passenger department of the Union Pacific. The claimant was the porter in charge of car 1112, and was under the immediate supervision of the Pullman conductor. Each of the other sleeping cars was in charge of a porter, all but one of whom seem to have been involved in the difficulty with which we are here concerned. The troops were under the command of Major Gordon R. Willis and under him were three other officers, one of them, Captain Wilson, a medical man. The train was filled to capacity; three men were allotted to each section. Meals were served in the cars. We can easily understand the difficulties in keeping cars clean under such conditions. There were paper plates to be collected; garbage to be removed; remnants of food to be swept up; and toilets which were in constant use to be kept sanitary. The first day seems to have passed without incident. There is no evidence of any fault found by the army personnel with the condition of the cars; and there is no evidence that the Pullman conductor had any difficulty with the porters. As a matter of fact there is nothing to show that at any time he found any specific fault with any one of them for non-performance of duty, except his statement to Major Willis when complaint was made, that he had tried to get the porters to do their job and couldn't, and his signed statement supported to some extent by his testimony that he had tried all day of the ninth without avail to get them to do their work properly. At Green River on January 9th the train commander, Major Willis, complained to the Pullman conductor of the condition of the cars and it was arranged that they should make a joint inspection of the train. As they went through they talked with the various porters to all of whom, with the exception of Porter Leak, complaints were addressed by Major Willis. The porters, with the exception of Leak, all claim that they were addressed in very insulting language, and in some instances were threatened with bodily harm if they did not carry out the orders which the commander gave them. There is no question whatsoever that he assumed to give them orders; and the evidence indicates that in what replies they made to him they showed considerable restraint. The details of what he said and did are in dispute. His statement as it appears in the record is to a large extent a defense of himself. It is hard to believe, however, that these porters, some of whom were approached separately and at different times by the train commander, whose statements were in part drafted at different times and at different places, could all have been in such accord as to the manner in which they were approached, if their statements are untrue. There are, moreover, certain significant corroborating facts which are not in dispute. Conductor Johnson says that Major Willis, in making his complaints to the porters told them that "unless they agreed then and there to perform their work he was going to request that they be removed from the train." And Conductor Henckel says in his statement that when the train had passed Nutria, Major Willis requested him to stop the train and put the porters off. Evidently the train conductor had some misgivings at leaving the men beside the tracks on a winter night and persuaded the Major to let him wait until the train got to the next station which was Kemmerer. Then the conductor states as follows: "The train was stopped at Kemmerer and they got off. At Kemmerer I told these porters that the major did not want them to go any further and they would have to get off the train and they got off without any trouble." The statement of Major Willis is not without significance. He denies that he abused, cursed, or threatened the men; but he does say: "I told these men in no uncertain

terms what I expected them to do and I used strong language about it . . . .” From all of the above it is not very difficult for us to understand what happened on this train, and from it all we are satisfied that these men did not voluntarily leave their posts of duty. The matter was so handled that they had no alternative but to get off. We are not here concerned with the major's conduct except in so far as it bears on the circumstances which explain the reason for the men leaving the train at Kemmerer, and not completing the work assigned to them on that trip.

This brings us to the question whether the claimant did in fact fail in his duty to clean his car. The evidence does not show that he did not do a proper job under the very difficult conditions that existed. There is evidence that the car was dirty but that was probably unavoidable. At least the evidence does not show in what respect the man failed. The condition was common to all the cars except the one occupied by the officers which was a room car. If one man failed, they all failed in about the same way. It is a question of opinion whether they could have done better. There is no evidence whatsoever of any discourtesy on the part of any porter toward any one unless the questioning by the claimant of the right of Major Willis to give him orders could be so regarded. And in this connection we must remember that the porters were not under army command. We think the whole matter is summed up by Mr. Collier, the train escort, who says in referring to the condition of the cars on January 9th: “I could not say that the cars were any more or less in need of cleaning the following day (January 9th) than many other troop trains on which I have acted as escort.”

Admittedly the carrier was in this instance in a very difficult position. It is evident that the War Department foresaw the possibility of clashes between the civilian and the military authorities in such cases as this where there would have to be cooperation between them in the movement of troops. To avoid just that it issued October 20, 1944, Pamphlet No. 20-7, Troop Train Commander's Guide (2 ed) in which we find the following under the title, “Extent of Command”;

*“As troop train commander you do not command the railroad personnel, nor do you control the operation of the train”*

The italics are in the original document. It is hard to imagine a more specific limitation on the authority of the train commander. It was his failure in this instance to observe the limits set on his authority that caused the difficulty with which we are here concerned. Had the matter been left to the railroad authorities the trouble could probably have been resolved. It is evident that the Pullman conductor bowed to a usurpation of his duties by the train commander which resulted in the removal of the train porters from their train, and that the Pullman Company felt bound to back up its conductor in giving his assent to such procedure. But that is no reason why this claimant should have been punished for an offense of which the evidence does not show him to have been guilty.

We have gone into this long analysis of the evidence in this case because, as we have said, disciplinary action by a carrier is not lightly to be set aside, and the grounds why we do so should be clearly understood.

**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 Employees 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

We find that the claimant was not derelict in his duty, and that his leaving the train at Kemmerer was not voluntary on his part but was ordered

by the carrier because of the demand of the train commander. Any disciplinary action was under the circumstances unwarranted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1946.