

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of J. B. Blair who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of the district of Ft. Worth, Texas.

Because The Pullman Company did, under date of December 30, 1943, deny the claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of Porter Blair under date of October 28, 1943 in which the Company is charged with holding Porter Blair out of the service in violation of the rules of the Agreement between The Pullman Company and its Porters, Attendants, Maids and Bus Boys and in which the Organization demanded pay for all time lost by Porter Blair as a result of having held him out of service as above mentioned.

And further, for Porter Blair to be paid for all time lost by him as a result of having been held out of service in violation of the above mentioned Agreement as set forth in the claim.

OPINION OF BOARD: Claimant is an extra Porter operating out of the Fort Worth District. On August 5, 1943, while deadheading in the Carrier's service between Fort Myers and Tampa, Florida, the train became involved in an accident and Claimant suffered an injury to his back. He was returned to Fort Worth when he was examined by Dr. A. D. Ladd, the Carrier's physician. On August 18, Dr. Ladd reported that Claimant had fully recovered from his injury but reported that a blood test had revealed that Claimant was suffering from syphilis. On September 6, 1943, Dr. Ladd advised the Claimant that he was able to return to work if he took treatments for syphilis. The record shows that Claimant consulted Dr. A. Antweil who on September 24, 1943, advised Claimant by a letter addressed "To Whom it May Concern" that Wasserman and Kline tests made on September 24, 1943, showed a negative reaction. On October 2, 1943, Kline and Kahn tests were both negative. On October 26, 1943, Claimant again called upon Dr. Ladd for further examination and he was then advised that he was in condition to return to work. On October 26, 1943, Claimant was returned to service by the Carrier. The claim is for time lost by Claimant from August 19, 1943 to October 26, 1943.

It is the position of the Organization that Claimant was not suffering from syphilis and for that reason he should be compensated for the time lost by him while held out of service on the theory that he was so afflicted.

It cannot be logically argued that the Carrier is without authority to withhold an employe from service who is affected with a communicable disease. That syphilis is such a disease is common knowledge. When the Carrier's doctor gave Claimant a Wasserman test and found it positive,

the duty of the Carrier to the traveling public required that he be withheld from service until his health condition was properly corrected. If the diagnosis of the Carriers' physician did not correctly state the facts, it would have been a simple matter to have further tests made by other physicians. This Claimant appears to have done but it does not appear anywhere in this record that the results were ever communicated to the Carrier's doctor or any officer of the Carrier until the date Claimant was restored to service on October 26, 1943. The record shows that when the Company doctor first obtained a negative test of Claimant's blood, he authorized his restoration to service. Information in the possession of the employe which is not communicated to the Carrier is not pertinent in the face of a diagnosis of a communicable infection which has been made known to the employe. It was clearly the duty of the employe to submit his evidence to the Carrier that he was in a good state of health, and his failure to so do requires a denial of a claim for time lost during the period of his own dereliction. To have permitted Claimant to return to service in the face of a positive Wasserman reaction pointing to a syphilitic condition, without proof of the incorrectness of the test or a cure or arrestment of the disease, would constitute a gross disregard for the welfare of the traveling public on the part of the Carrier. No basis exists for an affirmative award.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1946.