

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * * for and in behalf of J. Spraulding who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of the Chicago Southern District.

Because The Pullman Company, through one of its supervisory employes, was responsible for the unjust treatment of Porter Spraulding in that he, Spraulding, was arrested at the instance of this particular supervisory employe at Opelika, Alabama, on September 13, 1943; which incident not only resulted in Spraulding's arrest and fine but also resulted in his having to relinquish his regular assignment between Chicago, Illinois, and Miami, Florida, with the loss of some six weeks time for which the company, in its decision of March 17, 1944, refused to reimburse him.

And further, for Porter Spraulding to be reimbursed for the time he was forced to lose as a result of this unjust and unfair treatment at the hands of this supervisory employe of The Pullman Company in addition to being reimbursed for the fine of \$25.00 which he was forced to pay as a result of this unjust and unfair treatment.

OPINION OF BOARD: The Claimant, Porter Spraulding, was assigned between Chicago and Miami, Florida. On September 13, 1943, he departed from Miami on Car F. 202, en route to Chicago. Pullman Conductor Ziegele went on duty at Jacksonville on September 13, 1943. On the morning of September 14, 1943, at Columbus, Georgia, Conductor Ziegele told the Claimant to awaken some sailors, which the Claimant refused to do, saying the Petty Officer in charge told him not to call the sailors but to call him. The Conductor and the Claimant had some words, following which Ziegele reported that the Claimant threatened him with a broom handle and blocked him when he attempted to collect tickets and check the train. Ziegele reported these incidents to the Train Conductor who had the Agent at Opelika, Alabama, call the Police. The Police arrested him, put handcuffs on him and took him to jail. He was charged with disorderly conduct, to which he pleaded guilty, and was fined twenty-five dollars which he paid after having the money sent him by wire from the Pullman office at Birmingham, Alabama. The Claimant was paid through to Chicago for the trip leaving Miami September 13, regardless of the fact he was removed at Opelika.

The Claimant went out of Chicago on his next two regular trips to Miami. On October 10, 1943, he informed the Carrier he wanted off. After an absence of forty-four days he bid for and was assigned to Line 3150, Chicago to St. Louis, effective November 24, 1943.

During the period of Claimant's absence the following lines were posted for bids:

- 10-17-43 Line 1406 Chicago-Bay City
Relief Lines 1402 and 511 Chicago-Buffalo
and Chicago-Sioux City
Line 519 Chicago-Miami
Line 516 Chicago-Gulfport
- 11-12-43 Line 1403 Chicago-Detroit Car 17
Line 3150 Chicago-St. Louis
Line 1403 Chicago-Detroit Car 16
Line 513 Chicago-Tampa
Line 521 Chicago-St. Petersburg

On October 11, 1943, Claimant's representative, M. P. Webster, Chairman Executive Board, Brotherhood of Sleeping Car Porters, made a request of R. J. Ruddy, Carrier's Superintendent, for a hearing under the provisions of Rule 50 of the Agreement. The pertinent part of that Rule reads:

"An employe who considers he has been unjustly treated and who desires a hearing shall make a written request containing his specific charge within thirty (30) days from the date of the cause of complaint."

At the hearing, the above facts were developed and in addition the Claimant stated as a reason why he did not report for duty on October 10, 1943, was that on the two trips after his arrest he had been insulted and intimidated by a Military Policeman and a Pullman Conductor, and fearing bodily harm he discussed the situation with his Organization Representative and was advised to lay off. However, the Carrier contended that he said he wanted to lay off because of illness of his wife. There was evidence that Claimant had been drinking on the trip on which he was arrested. At the hearing Mr. McCaffery stated: "It is not my intention to state that Conductor Ziegele was fully justified in ordering the removal of Porter Spraulding at Opelika, Alabama." In effect he stated that he would compromise the claim for the amount of the fine. Claimant has refused this compromise offer on several occasions.

We find no Rule in the Agreement providing for reimbursement under the circumstances before us. As to the Carrier's offer to reimburse Claimant for the amount of the fine, such offer was one of compromise, "and it is fundamental that a rejected offer of compromise is, after its rejection, no longer binding on the party who makes it; and, in law, evidence of such offer is not permitted to be introduced. When the Brotherhood rejected the offer of compromise, it did so at the risk of losing its entire claim, when presented to this Board. The Carrier may still be willing to make its offer good, but, in our opinion, it is not required to do so." Award No. 2283.

Whether Claimant laid off on account of sickness or because he was afraid to continue his assignment, the fact remains that he voluntarily laid off. We see no violation of any Rule of the Agreement.

From what we have said, it follows that the claim should be denied.

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

There was no violation of the Agreement by the Carrier and under the facts of this record Claimant is not entitled to an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1946.