

Award No. 7812 (
Docket No. PM-7384

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: * * * for and in behalf of Paul T. Gay, who is now, and for some time past has been, employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company as a porter operating out of Chicago, Illinois.

Because the Chicago, Milwaukee, St. Paul & Pacific Railroad Company did, under date of September 3, 1954, take disciplinary action against Porter Gay by giving him an actual suspension of one trip off in his assignment effective September 6, 1954, which action was based upon charges unproved, and was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further, for the record of Porter Gay to be cleared of the charge in this case, and for him to be reimbursed for the pay loss which resulted from this unjust and unreasonable action.

OPINION OF BOARD: On August 2, 1954, Carrier's General Passenger Agent received the following communication:

"July 30, 1954

Genl Passgr Agent C. M. St. P. & P. Ry.
Chicago Ills.

Dear Sir:

I want to call your attention to poor service rendered by your Porter on the Hiawatha from Sioux City, Ia. last Sunday. I was in coach 4422 in pulling into Chgo that man never showed up woman had to get their grips and package down from the rack, had to carry them out. I was on crutches was waiting for the Porter would gladly paid him. A young lady took my grip, with with her grip got them out on the Platform but no Porter in sight—I can't see why the train Condr would not have checked on this neglect but is seems the Passenger be damned. I had the Agent Sioux City wire ahead for a wheeled chair to meet me, the wheeled chair was up at the Omaha Coach, some one up there got the chair while I had to stand there for 20 mins or more waiting for the wheeled chair.

Why was this wheeled chair not back at the Sioux City coaches where it was ordered?

It seems to me you would have some one ride these trains and check on the service extended to the Passengers, for this kind of treatment will drive Passengers to other lines or other modes of transportation.

Yours truly

/s/ W. M. Barnett

c/o Geo Barnett

R. D. No. 2—Duncannon, Pa."

On August 19, Claimant, Porter Paul T. Gay, was given notice of investigation by the Superintendent of the Carrier's Sleeping and Dining Car Department. Hearing was held on August 25, 1954, and Claimant was charged with "failure to assist invalid passenger with baggage when detraining at Chicago in violation of Rules 68, 70 and 80", which appear below.

"Rule 68—

"In addition to the services mentioned above coach porters shall be constantly on the watch for opportunities to assist passengers in other ways to make the trip as pleasant and comfortable as possible, always showing a willingness to serve in any way they can. Service offered with a smile is doubly helpful.

"Rule 78—

"Coach porters shall remain on duty in their own cars and not visit with employees in other cars.

"Rule 80—

"Approaching station, the porter shall carry baggage for passengers getting off train, using care to have right baggage by having passengers identify same, placing it in vestibule of car so that after train stops at station, it may be placed on the platform without delay. When passengers are boarding or getting off cars, assistance shall be offered and, if permitted, the porter shall take hold of their arm to prevent the passengers from slipping or falling."

The record establishes that Porter Gay was in charge of Coach 4422 and one other coach on the date in question, on Train 132-102. Following the hearing, the transcript of which is a part of the record, Claimant Gay was suspended from service for one trip, effective September 6, 1954. Appeal was made to Carrier's Assistant to Vice President, who declined it on September 28, 1954. This case was appealed to the Board December 3, 1954.

At the hearing, Claimant denied the charge. He said that he "did not recall" a passenger on crutches; that he would have given assistance had he known of any such passenger; and that he was on duty in both cars all the way from Sioux City. He insisted that he made the usual trip through both cars, after the train left Elgin, to check with passengers as to who wanted assistance with baggage. He took the baggage of those who wished his assistance and placed it forward in the rear car and to the rear of the forward car. And as his duties required that he open the doors and assist passengers off, he followed the usual procedure of being on the platform as the train pulled into the station at Chicago, to open the doors, remove the baggage and help the passengers off.

It must be borne in mind that these were not Pullman coaches, with porter assigned to each, and that many passengers prefer to handle their own baggage. It is not possible for the porter to be in two coaches at once.

And when Porter Gay says that he might have been in the other coach when passenger Barnett wanted him, it does not mean that he was in an Omaha coach, as Carrier's representatives have tried to make it appear.

Written statements, submitted in lieu of witnesses or oral testimony, have often been accepted as evidence by this Board. Such statements are taken for what they are worth and usually require some corroboration in the form of circumstantial or other supporting testimony. Here we have none. No one else complained of Porter Gay's poor service on the trip in question. His record of years of good and faithful service do not indicate that he is the kind of porter who is indifferent to his duties. Neither the conductor nor the brakeman have been produced as witnesses to corroborate the charges made against Porter Gay. Thus this letter from passenger Barnett cannot be accepted as a document which discloses all of the facts of the situation on the trip from Sioux City on August 25, 1954.

Obviously, the wheeled chair incident contributed much more to upsetting this passenger than did his failure to get the attention of the porter as the train came into Chicago. And admittedly Porter Gay knew nothing about the chair. The complaining passenger made no request for the porter's assistance. He apparently wanted his assistance at a time when some seventy or eighty other people might be wanting the same kind of assistance. And these people were scattered through two cars. At the time the young lady helped passenger Barnett with his baggage, the passengers were obviously leaving the coaches, the aisles were crowded, and the porter was required to be on duty at the exists. He simply could not be in two places at once.

While we are reluctant to substitute our judgment for that of management in discipline cases, it our duty and responsibility to see that punitive actions are for proper cause, and are supported by substantial evidence, not a mere allegation of one disgruntled passenger. After a careful examination of the record in this case, we can only conclude that the disciplinary action taken was arbitrary, unreasonable under the circumstances, and without just cause. Porter Gay's record should be cleared of this charge; and for any loss of pay sustained by him, he should be made whole.

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 Employees 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 penalty given Porter Paul T. Gay for the incident of July 25, 1954, was unwarranted under the prevailing circumstances.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 4th day of April, 1957.