

Award No. 13238

Docket No. PM-13381

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

**CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: . . . for and in behalf of Sterling Jones, who is presently employed by the Chicago, Rock Island and Pacific Railroad Company as a sleeping car porter operating out of Minneapolis and St. Paul, Minnesota.

Because the Rock Island Railroad did, through Mr. M. H. Bonesteel, General Superintendent of Dining and Sleeping Cars, take disciplinary action against Mr. Sterling Jones by giving him a ninety (90) day actual suspension from the service without pay, which suspension was based upon charges which were unproved and which action was harsh, cruel, arbitrary, unjust, and in abuse of the Company's discretion.

And further, for the record of Mr. Jones to be cleared of the charge in this particular case and for him to be reimbursed for the ninety (90) days pay he lost as a result of this unjust disciplinary action as is provided for under the rules of the Agreement governing the class of employees of which Mr. Jones is a part.

OPINION OF BOARD: Claimant, a Sleeping Car Porter, was charged as follows:

"You are hereby notified that an investigation will be held at Minneapolis, Minnesota on February 13, 1962 at 10:00 A. M., C.S.T. in the Conference Room, Milwaukee-Rock Island Passenger Depot to develop the facts, discover the cause and determine your responsibility, if any, concerning a report received in this office on January 16, 1962 that on December 28, 1961 you did not open up your sleeping car on Train No. 17 at St. Paul, Minnesota for the purpose of receiving passengers at this point, in violation of Rule 2, page 29 of the General Rules and Instructions for Sleeping Car Porters issued July 15, 1959, which reads as follows:

"At all enroute stations be out on station platform promptly on arrival and place (sic) step box, if required. If it is known car will be short of station platform and passengers are to entrain, walk ahead to convenient opening and assist passengers."

Hearing having been held Claimant was found guilty as charged and was suspended from service for 90 days.

While there is evidence in the record, which if believed, supports a finding that Claimant "did not open up your sleeping car on Train No. 17 at St. Paul, Minnesota for the purpose of receiving passengers," the evidence does not support a finding that, under the conditions prevailing, this constituted a violation of Rule 2 of the General Rules and Instructions for Sleeping Car Porters.

The following uncontroverted testimony of Mr. Burch, corroborated by Mrs. Burch, witnesses for Carrier, establishes that Car No. 17, the last car of the train, was short of the station platform:

"A. I feel certain for one that the rear platform [car] was back off the platform on this day. It could have been boarded if a step box had been put down but as I approached the rear car, along with the bulk of the passengers getting on that car in St. Paul the steps were up and the lower half of the door was shut. So it left no alternative but to walk back to the parlor car and board through the parlor car. All the passengers that I see board car 173 in St. Paul did get on in the parlor. We walked back in more or less of a group. I think there were probably 8 passengers that boarded car WEWCKA by the parlor car at the same time we did. We all boarded and went into the car unassisted."

Claimant is charged with violation of Rule 2. Rule 2 does not require the porter to have the door of a car open and be out on the station platform when the car is "short of station platform". It follows, therefore, that Claimant did not violate Rule 2 as charged. We will sustain the Claim.

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 Claimant did not violate Rule 2 of the General Rules and Instructions for Sleeping Car Porters, as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1965.