NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

A. M. Millard, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY

STATEMENT OF CLAIM.—

"The particular question herein involved is the right of The Pullman Company to discharge Porter W. B. Lowery from the service of said company after twelve (12) years on charges unproven and unsustained, and the persistence of said company in maintaining its position after hearings on this matter failed to produce adequate and convincing proof to warrant his dismissal from the service."

STATEMENT OF FACTS.—The employes ex parte statement of facts is summarized as follows:

W. B. Lowery was employed by The Pullman Company as a porter November 1924 to June 1, 1936. Up to April 29, 1936, he was running between Chicago and Los Angeles on C. R. I. & P. trains 3 and 4. On April 29, 1936, Pullman Company District Superintendent removed him from that run and placed him on extra list due to complaint of two passengers on train #3 April 19, 1936, that Lowery had refused to make their beds. That on June 1, 1936, District Superintendent discharged Lowery.

Lowery stated on leaving Phoenix, train #3, April 19, 1936, he made down the two beds in question whereupon the two passengers requested the beds be put away, which was done. Later, while Lowery was off duty for rest, someone requested him to get up and make the beds, to which he replied he would do so as soon as he came back on duty. After resuming duty, neither the passengers or train conductor made request on Lowery that the beds be made down.

That the charges submitted by District Superintendent, covering a ten year period, were sufficiently answered and were not serious enough to warrant his record being classed as unsatisfactory and did not justify the penalty assessed.

That on no occasion prior to incident of April 19, 1936, had he been told by any official that his record had become unsatisfactory and in no instance had he been removed from a run because of complaints.

On June 27, 1936, the Brotherhood of Sleeping Car Porters requested a conference with District Superintendent concerning Lowery's discharge. Conferences were held July 13 and 21, 1936. Appeals were taken to Superintendent Tully and Assistant to President B. H. Vroman, who sustained the discipline.

The carrier's statement of facts is summarized as follows:

W. B. Lowery was employed as a porter June 14, 1923, and resigned October 6, 1923. Reemployed November 24, 1924, and discharged June 1, 1936, for generally unsatisfactory service.

During Lowery's employment the carrier received six letters of commendation and thirteen satisfactory service inspection reports. His record is charged with numerous failures to perform his duty and complaints from passengers, the details of which are placed in evidence in his "service record."

The Book of Instructions to Porters issued by the Vice President & General Manager in March, 1935, a copy of which was supplied Porter Lowery, contains the following:

DISCIPLINE

"The Company requires of employes the best service possible under all conditions. A system of discipline by record is in force.

"Employes charged with any dereliction of duty or breach of rules will have full opportunity to be heard in their own defense, and if found guilty will be cautioned, warned against repetition of the offense, or disciplined by reprimand or book suspension. Individual record is kept of each employe and every case of negligence or improper conduct with penalties assessed will be entered thereon, and the employe notified of the action taken.

"When an employe's record shows frequent derelictions of duty or violations of rules, the question of his retention in the service will have special consideration, and dismissal may follow because of unsatisfactory service in general. Disloyalty, dishonesty, intemperance, immorality, insubordination, incompetency, discourtesy to passengers, gross carelessness, false reports, or concealing facts concerning investigations, etc. will subject the offender to dismissal."

Other instructions were violated by Lowery and he had on numerous occasions been instructed, warned and disciplined for violation of same.

The evidence brought to light during investigation of the incident of April 19–20, 1936, was so conclusive of the charge of unsatisfactory service on the part of Porter W. B. Lowery on that occasion and considered in connection with the many reports of unsatisfactory service performed by him on numerous occasions previously during the period of his employment, that the officials of the company reached the conclusion Porter Lowery had shown himself to be an undesirable employe and that the service of the company would be benefited by his retirement; therefore he was discharged on June 1, 1936.

Hearings were accorded as provided for by the agreement between The Pullman Company and its Porters and Maids, effective June 1, 1929, which was placed in evidence.

POSITION OF EMPLOYES.—In support of claim the employes declared:

That the charge submitted by The Pullman Company upon which the discharge of Lowery was based, has not been sufficiently proven to warrant discharge:

That Lowery was not discharged for generally unsatisfactory service but the discharge grew out of the complaint of two passengers relative to refusal to make beds on train #3, April 19, 1936 and that neither the incident of April 19, 1936 or his general record justified his discharge.

POSITION OF CARRIER.—In support of the propriety of the dismissal the carrier analyzed the evidence contained in the various exhibits of record, and summarized its position as follows:

Review of Lowery's record while employed as porter shows a persistent and continued decline in character of service rendered. He was indifferent to passengers, carrier's instructions, discourteous, belligerent and argumentative. He slept on duty, neglected his duty and on April 19–20, 1936, when requested by passengers and train conductor, he refused to prepare two beds for passengers holding Pullman tickets for same.

That Lowery had repeatedly been instructed, warned and disciplined by book suspension for violation of instructions and had been removed from a run and placed on the extra list (7–1–29) until he could demonstrate his ability to carry out instructions and he was told, unless he improved his service he would find himself out of a position. That on several later occasions he was instructed and warned on account of violation of instructions.

His repeated failure to perform his duties in a satisfactory manner, his persistent and repeated violation of instructions, and his failures to extend courteous and proper attention to passengers occupying space in Pullman cars to which he was assigned as porter, all of which have been fully demonstrated in the "Statement of Facts" and in exhibits, W. B. Lowery has proved that he was utterly unfit for the position of porter and that his discharge was completely justified.

OPINION OF BOARD.—The service record of claimant in this dispute during his years of employment with The Pullman Company is one that is marked with incidents of both approval and disapproval of his conduct, each of which is indicated as having been impartially credited to the record of claimant on the one hand, or adjusted according to the conditions developed in connec-

tion with each incident on the other. In their cumulative evidence, however, and regardless of their periodic fluctuation, the fact that the records of infraction of the Company's rules outweigh the letters or records of commendation, must have some influence upon disputes of this character if for no other purpose than of calling attention to the class of service and cooperation rendered by the employe to the Carrier, both in the performance of his required duties and in his conduct and attitude toward the traveling public and the patrons of the Carrier. Doubtless this cumulative evidence has been considered by the Carrier in both routine and special investigations concerning this employe and his service and attitude, and while no doubt many classes of service that were deserving of written or other commendation, may and doubtless have been rendered by this claimant, the same may be equally true of unrecorded infractions of the rules of a class similar to those to which attention has been called. No facts are submitted as to weight of the previous cumulative evidence, which in connection with the conditions of this instant case determine the Carrier in its disciplinary action. However that may be, the Board submits its opinion that the claimant was given a fair and impartial hearing on the charges on which this claim is based, and these were such, whether of themselves, or coupled with the claimant's previous record, as to afford a reasonable basis for the disciplinary action applied by the Carrier and based on the instructions issued to the employes of The Pullman Company.

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 employe involved in this dispute are respectively carrier and employe 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 there is no basis for disturbing the disciplinary action of the Management.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 29th day of April, 1937.