

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "For and in behalf of H. Brooks who was formerly employed by The Pullman Company as a sleeping car porter operating out of the Pennsylvania Terminal District of New York City. Because of the discharge of H. Brooks from his position as a porter in the said district by The Pullman Company, unjustly and without sufficient reason on April 30, 1938, and for the restoration of H. Brooks to his former position as a porter in the said district without loss of seniority and with pay for all time lost by reason of such discharge."

EMPLOYEES' STATEMENT OF FACTS: "The petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is the duly authorized and designated representative of all porters, attendants, and maids in the employ of The Pullman Company under the provisions of the Railway Labor Act.

"Your petitioner further represents that in such capacity, it is the duly authorized representative of H. Brooks, who was formerly employed as a porter out of the Pennsylvania Terminal District of New York City. Your petitioner further submits that for several years prior to April 30, 1938, H. Brooks operated as a porter for The Pullman Company out of the aforementioned district.

"Your petitioner further represents that on April 14, 1938, Brooks was assigned to do station duty in the Pennsylvania Terminal from 2:30 P. M. until 10:30 P. M. and that at approximately 9:00 o'clock, he was requested by Night Agent Donnelly to go out on a car, the destination of which was Montreal, Quebec, Canada.

"Your petitioner further states that former Porter H. Brooks attempted to explain at that time to Mr. Donnelly that he was not in a position to go out on a car, but that before he could explain this to Mr. Donnelly, he (Mr. Donnelly) lost his temper and shouted at him, telling him that he would have to see Mr. Schwotzer, the Superintendent.

"The petitioner further submits that former Porter Brooks did on various occasions on the night referred to, attempt to explain to Mr. Donnelly that he was not in a position to go because of a physical ailment, but that Mr. Donnelly refused to listen to him. The petitioner further represents that a hearing was granted to H. Brooks on April 23, 1938, and that he was charged with refusing to accept an assignment.

"The petitioner further represents that after said hearing, former Porter H. Brooks was discharged from the service of The Pullman Company in the aforementioned district on April 30, 1938.

"The Book of Instructions to Porters, copy of which had been furnished Porter Brooks, provides, among other things, that:

'Car service employes are subordinate to all officers of the Company.'

'* * * insubordination * * *, false reports or concealing facts concerning investigations, etc., will subject the offender to dismissal.'

"Night Agent Donnelly is a supervisory officer of the Company in the Pennsylvania Terminal District. Brooks was on notice that insubordination on his part, or the making of false reports or concealing facts, subjected him to dismissal.

"Examination of the minutes of the hearing, Exhibit 'A', and those of the conference, Exhibit 'B', will show that no evidence has been introduced by Brooks' representatives in any manner to contradict, deny or discredit the authenticity or truthfulness of the reports and statements submitted by the Company in this dispute.

"This Division, on numerous occasions in its awards, has repeatedly stated that the control by the employer over the employe should not be interfered with in the absence of clear abuse of discretion. There has been no abuse of discretion in the action taken with Porter H. Brooks.

"The information furnished in this submission clearly demonstrates that Porter Brooks has not been discharged 'unjustly and without sufficient reason' and that he is not entitled to be restored to his former position 'without loss of seniority and with pay for all time lost,' as claimed by the petitioner. The request for such reinstatement and pay should be denied.

"While the minutes of the hearing and those of the conference have not been attested by Porter Brooks' representatives, they constitute an accurate record of what took place in the hearing and in the conference."

OPINION OF BOARD: Refusal of Porter H. Brooks, temporarily on station duty, to make an emergency road trip, due to the assigned porter becoming confused as to his assignment and failing to show up, warranted the disciplinary action taken. However, in view of the particular facts and circumstances, it is felt he should now be restored to service, without loss of seniority, but without compensation for time lost.

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 Porter Brooks should be restored to service, with full seniority, but without pay for time lost.

AWARD

Porter H. Brooks shall be restored to service, with full seniority, but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of November, 1938.