

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 C. R. Walton who was formerly employed as a porter by the Pullman Company, operating out of the District of Kansas City, Missouri, because of the discharge of C. R. Walton from the service of the Pullman Company in said district unjustly and without sufficient reason on July 28, 1938 and for the restoration of C. R. Walton to his former position as porter in the Kansas City District without loss of seniority and with pay for all time lost by C. R. Walton by reason of such discharge."

EMPLOYEES' STATEMENT OF FACTS: "Your petitioner, The Brotherhood of Sleeping Car Porters, respectfully submits that it is the duly designated and authorized 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 duly authorized to represent C. R. Walton, who was formerly employed as a porter in the district of Kansas City, Missouri.

"Your petitioner further sets forth that C. R. Walton was employed by The Pullman Company, in the above mentioned district, for some fourteen (14) years prior to July 28, 1938.

"Your petitioner further submits that on or about June 25, 1938, Walton went to the office of District Superintendent Fitzgerald in the Union Depot in Kansas City, Missouri in answer to his name which had been posted on a list in said district, and that Walton was asked by Superintendent Fitzgerald why he had not made the total deductions from the total elapsed time of his trips that he had been making. And that Walton advised Superintendent Fitzgerald that he was only deducting the rest time actually obtained, and that the sleep period was all of the rest time that he had gotten on the trips since the conductor had not assigned him any other periods; that was why he did not put down any additional deductions.

"Your petitioner further states that during the above mentioned interview Superintendent Fitzgerald made some notations in his own handwriting on some of his (Walton's) duplicate time slips to the effect that he (Walton) had not asked the conductor to verify the rest time not obtained, and asked Walton to sign same.

"Your petitioner further represents that he (Walton) asked Superintendent Fitzgerald why should he sign these notations, whereupon Superintendent Fitzgerald entered into a general discussion of deductible time, telling Walton that the time that he spent for his meals automatically takes up all of the deductible rest time not otherwise given.

'I was working at the Car Desk afternoon of June 25th when Porter C. R. Walton came into the office to see you.

'After a few minutes discussion regarding Walton's failure to turn in his duplicate time slips at the close of each pay period, and his failure to carry his time in accordance with instructions, I heard you ask him in a very plain and civil manner if he understood your instructions that if he did not make deductions on his time book for sleep and rest as shown on Form 93,127 posted in the office, he would have to make notation under remarks showing that he did not receive any day time rest and present his time book to each conductor handling the car for signature.

'Walton would not answer your question and you repeated the question to him a time or two and finally he said in a very mean and disrespectful manner that he heard what you were saying, but he was getting his instructions from the Brotherhood and did not have time to argue with you about the matter. He then walked out of your office.'

"The Agreement between The Pullman Company and its Porters, Attendants and Maids, in Rules 49 to 58 inclusive, establishes the machinery for adjudicating all differences of opinion between the management and its employes. Porter Walton, though disagreeing with the instructions received from his employer on the subject of deductible rest periods, ignored this machinery set up by the Agreement for his benefit. These rules definitely prescribed the course of action to be pursued in handling either a grievance or a claim. Instead of following such a course of action, Porter Walton chose to bring about his own interpretation of the Agreement by his own method, and furthermore displayed an arbitrary and insubordinate attitude toward his superior officers.

"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 in the case of Porter C. R. Walton.

"The point involved in this case is not a matter of interpretation of rule. On the contrary, it involves only the proper action to be taken when an employe fails to carry out instructions and is repeatedly insubordinate. By both admission and action Porter Walton has shown that he knew how to fill out his time sheets. His frequent acts of insubordination have been as clearly established as his repeated attempts to effect independently of the Agreement his own interpretation of its rules. Porter Walton was aware that violation of the rules and insubordination would subject him to dismissal. No ground exists upon which to base the contention that Porter Walton was discharged 'unjustly and without sufficient reason,' or that he should be restored to his former position 'without loss of seniority and with pay for all time lost.' The claim should, therefore, be dismissed."

OPINION OF BOARD: Failure of Porter C. R. Walton to comply with written and verbal instructions relative to showing on his time sheets prescribed deductions for rest periods, his failure to make entry on time sheets and refusal to make statement to the Superintendent as to why such periods of rest were not secured, his attitude toward his superior and action in walking out of Superintendent's office before conclusion of conference, and his failure to deposit duplicate copies of time sheets warranted disciplinary action.

However, in view of the particular facts and circumstances, especially that conductors, in a number of instances, verified entries on Walton's time sheets without the required explanation as to why the porter had not secured prescribed rest; it is felt Walton should now be restored to service without compensation for time lost and with the period out of service deducted from

his seniority. Such discipline as he has sustained is fully justified by his offensive attitude toward his superior officer when called upon to explain his failures. This shall not be regarded as a precedent.

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 Walton should be restored to service without compensation for time lost and with the period out of service deducted from his seniority.

AWARD

Porter C. R. Walton shall be restored to service without compensation for time lost and with the period out of service deducted from his seniority.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1939.