

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 A. B. Johnson, a porter employed by The Pullman Company for some nineteen years and operating out of the Pennsylvania Terminal District of New York City, New York, because The Pullman Company did deny the request of A. B. Johnson to return to work from sick leave on the grounds that Johnson had been retired, which alleged retirement was arbitrary and tantamount to a discharge without hearing, which was in violation of the rules of the contract now in force between The Pullman Company and its porters, attendants and maids; and for Porter Johnson to be returned to his position as porter in the Pennsylvania Terminal District and paid for all time lost because of having been denied the right to return to work."

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

"Your petitioner further submits that in such capacity it is duly authorized to represent A. B. Johnson who for some eighteen years was employed by the Pullman Company as a porter operating out of the Pennsylvania Terminal District of New York City.

"Your petitioner further sets forth that on or about April 22, 1938, he obtained a leave of absence because he was having trouble with his eyes, and at the advice of physicians, entered a hospital for treatment. He was released from the hospital on or about July 12 at which time he reported to the Company for duty. On the request of the Management, he submitted to them a report from the hospital in which he had been treated, later being examined by a Dr. Moses, a railroad doctor, who refused to O. K. Johnson for service. In the latter part of September 1938, Johnson was recalled by the Pullman Company and again examined by Dr. Moses who again refused to O. K. him for service on account of his eyesight, maintaining that Johnson's vision was limited to twenty feet.

"Johnson reported to his Superintendent, Mr. Schwotzer, who agreed that if Johnson could bring in medical testimony to the effect that he (Johnson) could see much farther than twenty feet with his glasses, he would consider returning him to work.

"Your petitioner further submits that Johnson had his eyes examined at the Vanderbilt Clinic in New York City, which made a report that stated there was no reason to keep Johnson from following his occupation.

"Your petitioner further sets forth that when this report from the Vanderbilt Clinic was submitted to the Management that he was again examined by Dr. Moses who refused to O. K. him for work.

Johnson would be subject were he returned to service. In most lines porters report to, and leave, cars parked in yards which necessitates crossing live tracks, often at night. Johnson may be able to see a car two blocks away, as he claims, if he looks straight at it. However, owing to his contracted field of vision, he is especially vulnerable to the danger of a car or train approaching from the side, exactly the danger present when crossing the tracks in a coach yard. The hazards to which Johnson's unusual susceptibility to blindness occasioned by a bright flash of light or sudden darkness subjects him need hardly be dwelt upon. It will be apparent at once that this defect may prove disastrous, particularly at night, wherever Johnson might be, whether passing through the yards, receiving or discharging passengers in a station, or performing duties on a car. The number of bulky objects such as upper berth ladders, mattresses, head-boards, ice pails, etc. which Johnson would have to handle while in service would subject passengers or employes passing through his car continually to the danger of being hit because of Johnson's very limited vision.

"Although it is not a pleasant task to retire an employe because of disability, especially an employe who, owing to lack of service, cannot at present qualify for a retirement income, the Management's responsibility for Johnson's safety, as well as that of other employes and passengers who might be injured as a result of Johnson's defective vision, has required that he be retired. The right of the Management to be 'abundantly precautions' in cases such as the instant case has been acknowledged by the Third Division in its Awards Nos. 235 and 875.

"In brief, no rule of the current Agreement was violated when Johnson was retired; he suffered no injustice because of his retirement; and his retirement was not only warranted but required for his own safety and that of all others with who, he might come in contact. The employes' claim in its entirety should be denied.

"All data submitted herewith have previously been presented to the employe's representatives and made a part of the question in dispute, except the citations of Third Division Awards." (Exhibits not included.)

OPINION OF BOARD: On April 15, 1938, A. B. Johnson, employed as a porter in the Pennsylvania Terminal District of the Pullman Company, laid off on account of physical disability.

He was examined at the City Hospital, Welfare Island, New York City, April 27, 1938, and found to be suffering from loss of vision. He remained in the hospital until July 12, 1938, when he was discharged as improved.

On July 23, 1938, Dr. Albi of the City Hospital certified that Johnson has been under his professional care and treatment from April 22 to July 12, 1938, inclusive, during all of which time Johnson has been wholly unable to perform the duties of his position by reason of:

Diagnosis: Central nervous system lues—Optic Atrophy.

For the purpose of keeping informed as to Johnson's condition, with the view of his return to service if and when his acuity of vision met the usual requirements, between July 29, 1938 and April 6, 1939, he was examined nine times by physicians selected either by the Carrier or the Organization. While the reports were in general agreement as to defective or impaired vision, there was difference of opinion as to his qualifications for service as a porter.

On July 15, 1939 the Organization requested the Carrier to set a time and place for a hearing to determine why Johnson was being denied his right to work, following which the Carrier advised the Organization that Johnson was retired effective May 31, 1939 on account of physical disability. The claimant denied receiving Carrier's letter of May 26, 1939 advising of his retirement effective May 31, 1939. The Carrier waived the provisions of Rule 50 and accorded Johnson a hearing on October 11, 1939.

In view of the facts presented and the possibility of Johnson's physical condition improving to the extent he would become qualified for porter service, the Board holds that his name should be restored to the seniority roster with seniority unimpaired, and that, if and when he can pass the physical examinations customarily required of porters, that Johnson shall be permitted to resume work. This is not to be construed as holding that his name must be carried on the roster after it is known he is permanently incapacitated for service.

Pay for time lost by reason of not being permitted to work should be denied.

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, under the conditions set forth in the Opinion, Johnson's name shall be restored to the seniority roster and that, if and when he can pass the physical examinations customarily required of porters, he shall be permitted to resume work. Pay for time lost is denied.

AWARD

Claim to be disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1940.