

Award No. 1226

Docket No. PM-1229

**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 S. L. Davis, who is now and for several years past has been employed by the Pullman Company as a porter operating out of the District of New Orleans, Louisiana, because the Pullman Company did under date of January 6, 1940 take disciplinary action against Porter Davis by assessing his record with a 'reprimand' which action was unjust and unreasonable, and because the charges upon which the disciplinary action was taken were unproved; and further, for the record of Porter Davis to be cleared of the charges made and of the disciplinary action taken as the result of said charges."

**EMPLOYES' STATEMENT OF FACTS:** "Your petitioner sets forth that it is the duly authorized representative of all porters, attendants and maids employed by The Pullman Company as provided for under the provisions of the Railway Labor Act.

"Your petitioner further sets forth that in such capacity it is duly authorized to represent Porter S. L. Davis who is now and for a number of years past has been employed by The Pullman Company operating out of the district of New Orleans, Louisiana.

"Your petitioner further sets forth that on or about December 4, 1939 Porter Davis was called into the office of The Pullman Company in the New Orleans District and confronted there with a report of what the Company refers to as a passenger service inspector in which he was charged with several service derelictions. Porter Davis denied being guilty of these service derelictions; whereupon, District Superintendent Olney asked him to sign for reinstructions in connection with these alleged derelictions. Porter Davis declined to sign, but said that he would write a statement in connection with the charge and desired a hearing because he was not guilty of the derelictions as charged. Porter Davis did write a statement to District Superintendent Olney but Mr. Olney insisted that he sign for reinstructions in connection with this report of alleged derelictions of duty. Porter Davis again declined, and on December 21, 1939 was charged by District Superintendent Olney with insubordination.

"Hearing on these charges was held in the New Orleans District on December 28, 1939 after which disciplinary action was taken against Porter Davis and his record assessed with a 'reprimand.' Appeals from the decision of District Superintendent Olney were made through the regular channels up to and including Mr. B. H. Vroman, Assistant to the Vice President of The Pullman Company who sustained the disciplinary action taken in this case by Mr. Olney.

"Your petitioner further sets forth that the Brotherhood of Sleeping Car Porters did on March 8, 1940 file notice with the National Railroad

his receipt of reinstructions by his signature. That such a signature in no way concerned the questions of dereliction, or guilt, was made clear to him. Davis' arbitrary refusal to acknowledge his superior officer's reinstructions is disclosed in District Superintendent Olney's report to Mr. Gibney (previously quoted), and in the testimony in the local hearing (Exhibit A). Mr. Olney's reports are substantiated by the testimony given in the local hearing by Stenographer Feske. Davis' actions clearly constituted deliberate insubordination.

"The Board has repeatedly held that in the absence of clear abuse of discretion, the exercise of control of its employes by the carrier will not be disturbed. There has been no abuse of discretion in the instant case. Davis' arbitrary refusal to acknowledge the fact that he had been reinstructed on certain service features warrants the discipline administered, a 'reprimand.' His claim should be denied."

**OPINION OF BOARD:** Following receipt of report that Porter Davis had not complied with three service regulations on a trip in November 1939, the porter was called in by the District Superintendent for the purpose of discussing the report. Without passing on the question of non-compliance with regulations, the Superintendent reinstructed the porter on the service requirements and asked him to sign a statement showing he had been reinstructed on the regulations in question. This the porter declined to do, but later he wrote a letter to the Superintendent in which he stated he did not recall such an incident to be true as he understood the instructions, etc. The superintendent informed Davis that his letter did not acknowledge the reinstructions given him and asked that he add a postscript to his letter to cover that matter. The porter asked for and was given time to think this request over. Not hearing from the porter, he was again called to the office on December 7, 1939 and asked for an acknowledgment, whereupon Davis again refused.

On December 28, 1939 Davis was given a hearing on the charge of insubordination because of his refusal on December 7, 1939 to acknowledge the reinstructions. Subsequently his record was assessed with a "reprimand."

Whether a porter shall be instructed or reinstructed as to his duties or service requirements is a matter for the carrier's determination. The acknowledgment of such instructions is usual and necessary for record purposes and is not an acknowledgment of guilt.

The basic dispute presented is whether or not such instructions and reinstructions are considered as disciplinary action. On this question the parties are definitely in disagreement.

The Board holds that the conflict in evidence on the question as to whether or not instructions or reinstructions are considered as disciplinary action indicates that the issue is such as to make it impossible for the Division to render an award thereupon and the question should therefore be remanded to the parties for settlement through conference and agreement.

**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 the question as to whether or not instructions or reinstructions are considered as disciplinary action shall be remanded to the parties in accordance with the Opinion.

AWARD

Case is remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1940.