

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY

STATEMENT OF CLAIM: ". . . for and in behalf of J. L. Lynch, who is now and for a number of years past has been employed by The Pullman Company as a porter operating out of the District of Salt Lake City, Utah, because The Pullman Company did under date of December 29, 1939 deny to Porter Lynch the right to exercise his seniority and to operate on line 345½, Salt Lake City, Utah-Butte, Montana, which denial was in violation of the rules of the agreement then and now in force between The Pullman Company and its porters, attendants and maids; and further, for Porter Lynch to be allowed to exercise his seniority in accordance with the rules of the aforementioned contract; and for Porter Lynch to be paid for any money loss he has suffered because of the denial of his right to exercise his seniority as above stated."

EMPLOYES' STATEMENT OF FACTS: "Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is the duly authorized representative of all Pullman porters, attendants and maids employed by The Pullman Company for all purposes as provided for under the Railway Labor Act.

"Your petitioner further sets forth that in such capacity it is duly authorized to represent J. L. Lynch who is now and for a number of years past has been employed as a porter by The Pullman Company operating out of the District of Salt Lake City, Utah.

"Your petitioner further sets forth that on or about September 25, 1939 Porter Lynch placed in a bid for a right to operate on line 345½ between Salt Lake City, Utah and Butte, Montana.

"Your petitioner further sets forth that when the line was awarded, there was assigned to the line employees with less seniority than Porter Lynch.

"Your petitioner further sets forth that under date of October 28, 1939 the Brotherhood of Sleeping Car Porters did file a claim for and in behalf of Porter Lynch maintaining that he had been denied the right to exercise his seniority under the provisions of the contract then and now in effect between The Pullman Company and its porters, attendants and maids; and by virtue thereof has suffered a financial loss because he was not allowed to operate on that particular line; and that three porters younger in service were assigned to operate on the line.

"Your petitioner further sets forth that under date of December 29, 1939 the respondent company did, through its District Superintendent in the Salt Lake City, Utah District, advise Porter Lynch that the claim in the instant

Line No. 345½, to notify him of the manner in which his seniority could be exercised, and to advise that he would be paid, as he was, for the money difference involved up to the date of notification.

"Since Porter Lynch is now regularly employed, the instant claim amounts simply to a demand for the unlimited exercise of seniority and assignment to a particular run. The limitation of Lynch's seniority is provided for by both the agreement with the porters, attendants and maids and the contract with the Union Pacific. Lynch alone is responsible for the limitation to which the exercise of his seniority is now subject. In view of these facts, Porter Lynch's claim for assignment to the particular run he desires is a matter over which the Company has no control, is without merit, and should be denied."

OPINION OF BOARD: The facts disclose that following a hearing whereat Porter Lynch was charged with improper conduct, this porter was "restored to active service." The decision of the District Superintendent is contained in his letter to Porter Lynch of July 29, 1939. The letter states: "It is my decision, therefore, that you be restored to active service, but without compensation for the time lost and with the period out of service deducted from your seniority." It should be noted that this decision in no manner limited the railroads upon which Porter Lynch might work thereafter, but restored him to all of the rights he had prior to the decision with the exception only of deductions from compensation and seniority time. Porter Lynch did not exercise his right of appeal from this decision but accepted it as final. Had the decision inflicted the further penalty of limiting the scope of Lynch's future work it is very probable that he would not have been content to accept such decision as final. The failure of Lynch, following this decision, to demand that he be restored to his prior work or his failure for a period of time to exercise rights of seniority cannot be determinative of the issue here presented, for there was no obligation upon him to do either.

We are of the opinion that this Board must accept the decision made by the District Superintendent on July 29, 1939. This decision became final upon the failure of Lynch to appeal therefrom, and thereafter it was without the authority of the company to inflict a further punishment upon Lynch for his alleged improper conduct, by limiting the scope of his future work as was attempted by the letter of the District Superintendent dated December 29, 1939.

The Carrier contends that on account of an agreement it has with the Union Pacific System it is unable to comply with the present demand of Porter Lynch. However, Lynch's rights must be determined by the agreement between the Pullman Company and Porters. Porters' rights cannot be determined by a contract, not made for their benefit, between the Pullman Company and a third party in the absence of any agreement, express or implied, that such contract was to be binding on the Porters.

The Carrier cannot justify its action under Rule 45 of the Agreement. By its acts and by the decision of its Superintendent it acknowledges Porter Lynch's "fitness and ability." The reason advanced for its refusal to permit this porter to operate on the Union Pacific is its contract with this company, but this contract is not binding upon Lynch. No question of "fitness and ability" under Rule 45 is presented by this record.

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 agreement, Porter Lynch was entitled to exercise his seniority rights to operate on line 345½, and he should be paid by the Carrier for any money loss he has suffered on account of the denial of these rights.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1940.