

Award Number 3100
Docket Number PM-2886

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(Curtis G. Shake, Referee)

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of Enoch Marshall who was formerly employed by The Pullman Company as a porter operating out of the St. Paul, Minnesota district, particularly, and for and in behalf of the Porters, Attendants, Maids and Bus Boys employed by The Pullman Company, generally.

Because The Pullman Company did, under date of May 13, 1944, deny the claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of the above-mentioned parties in which the Company was charged with violation of the contract between The Pullman Company and its Porters, Attendants, Maids and Bus Boys in that it did, through its district superintendent in the Minneapolis, Minnesota district and one other man who represented himself as a detective, intimidate, coerce, browbeat and force Enoch Marshall to sign a certain statement dictated by the so-called detective against Enoch Marshall's will and, through the same methods above mentioned, induced Enoch Marshall to resign his position as a porter with The Pullman Company in the Minneapolis District, all of which the Organization maintains was in violation of the above mentioned Agreement and in violation of both the letter and spirit of the Railway Labor Act.

And further, for Enoch Marshall to be returned to his former position as a porter in the Minneapolis, Minnesota district and for him to be reimbursed for all time lost as a result of said action above mentioned.

OPINION OF BOARD: During a company investigation of his alleged misconduct as a Pullman Porter, the Claimant resigned his position. He asks that he be reinstated and compensated for time lost because (1) no charges were preferred against him; (2) he was not accorded a hearing; and (3) he was intimidated and coerced into resigning by the Carrier's representative. The first two of the above propositions may be passed as immaterial since, manifestly, no charges or hearing are necessary to terminate the relationship of an employe who resigns his position. The question remains, what remedy is available to an employe who is forced to resign against his will?

The answer to the above query is to be found in the second paragraph to Rule 50 of the effective Agreement:

"An employe who considers he has been unjustly treated and who desires a hearing shall make written request containing his specific charge within thirty (30) days from the date of the cause of complaint."

We cannot agree with the contention made on behalf of the Claimant to the effect the quoted portion of Rule 50 has reference only to employes who have been disciplined, suspended or discharged. By its terms, it applies to an employe who "has been unjustly treated and who desires a hearing." In our judgment, the language is broad enough to authorize an employe who has been coerced into resigning to demand a hearing.

Neither can we subscribe to the Petitioner's contention that the Claimant is without the protection of the Rule quoted above because, having resigned, he is no longer an employe. If, as the Petitioner contends, the resignation signed by the Claimant was procured by coercion and intimidation, it is null and void and the Claimant's status as an employe still obtains. Petitioner's theory is, therefore, inconsistent with its demand.

For failure of the Claimant to request a hearing within thirty (30) days from the date of the cause of his complaint, the claim must be denied. We have purposely refrained from discussing the nature of the Claimant's alleged misconduct or the merits of his charge that he was improperly induced to resign, for the reason that these matters are not properly before us.

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 Employes involved in this dispute are respectively carrier and employes 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 no violation of the Agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 31st day of January, 1946.