# Award No. 3218
# Docket No. PM-3247

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Edward F. Carter, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF SLEEPING CAR PORTERS

## THE PULLMAN COMPANY

**STATEMENT OF CLAIM:** * * * for and in behalf of E. G. Domantay who is now, and for some years past has been, employed by The Pullman Company as an attendant operating out of the Chicago District Commissary.

Because The Pullman Company did, under date of June 26, 1945, take disciplinary action against Attendant Domantay by giving him an actual suspension of thirty days on charges unproved; which action was unjust, unreasonable, arbitrary and in abuse of the Company's discretion.

And further for the record of Attendant Domantay to be cleared of the charge in this case and for him to be reimbursed for the thirty days pay lost as a result of this unjust and unreasonable action.

**OPINION OF BOARD:** Claimant was regularly assigned in Pullman service as an attendant on car Birch Falls, a six double bedroom-Buffet-Lounge car operating between Chicago and New York. On arrival in New York on February 28, 1945, it was discovered that car Birch Falls was in bad order on account of slid-flat wheels and it was removed from service. In its stead car Corot, a six compartment-three drawing room car of the sleeper type, was substituted for the return trip. On learning of the substitution, Claimant refused to fill his assignment on the ground that he was assigned to lounge car service and that he was not required by controlling agreements to work on a sleeper type car. He further contended that the substituted car was too heavy for him to handle and that he was too ill to take car Corot out on the return trip. Claimant was charged with arbitrarily refusing to complete his assignment and, after hearing, was suspended from service for thirty days. Claimant contends that the action of the Carrier was unjust, unreasonable, arbitrary and an abuse of discretion on the part of the Carrier.

The Scope Rule of the applicable Agreement is relied upon by Claimant. That rules provides:

> "Rule 1. Scope. This Agreement shall apply to all employes of the Pullman Company classified as
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> (a) Porters (including porters-in-charge when so designated);
> (b) Attendants (employes assigned to buffet, club, broiler, restaurant and recreation cars who in addition to other duties are held accountable for commissary supplies and equipment on such cars;
> (c) Maids; and
> (d) Bus Boys;

in their performance of service in connection with Pullman sleeping, parlor, buffet, and club cars, and in composite cars which are equipped to provide two or more of such services."

While it is true that the foregoing rule classifies Pullman service employes, there is nothing therein which purports to separate the work of the classes of employes therein mentioned. Language contained in Award 1078 of this Division is pertinent:

> "The scope rule of the Agreement, upon an alleged violation of which this claim is based, specifies the classes of employes subject to the Agreement; it does not specify the work which may properly be assigned to, or the duties which may properly be required of, these classes of employes. In point of fact, the employes here involved perform a great variety of services for the inclusion of which no express authority either exists or is required to exist. These services have developed in response to the exigencies of particular situations, and no reason appears why the duties prevailing at any given time should be deemed to be definitive."

The record shows that Claimant had performed service usual to porter service on the car Birch Falls, it having six double bedrooms under his charge. It is true, also, that there was certain Commissary service to perform on car Birch Falls which car Corot was not equipped to provide. The higher rate of pay as an attendant was because of this latter fact and not because an attendant was not required to perform duties as a porter.

While Claimant was assigned to work on car Birch Falls, the designation was necessary to make the assignment definite and does not infer that Claimant was assigned to lounge or buffet car service exclusively. We are of the opinion therefore that Claimant was under obligation to the Carrier to make the return run on car Corot under the circumstances here shown. We have carefully examined Rule 43 of the current Agreement, the Mediation Agreement of August 25, 1937 and the Supplemental Agreement of Septmber 30, 1937, relied upon by Claimant, and we find nothing therein inconsistent with this view.

It is urged that the Carrier has in repeated instances permitted attendants to decline to go out on regular assigned runs where sleeper type cars were substituted. Such situations thus described are not comparable to one such as we have here where, because of mechanical failure, a substitution of cars is required during the course of assignment. Whether the Carrier by its interpretation of the Agreement as it relates to substitution of cars before an assignment begins, has estopped itself to deny the interpretation for which the employes now contend, is a question not before us at this time and which must be left to the consideration of this Division when such a case is presented.

There is a further reason why Claimant was not justified in refusing to complete his assignment. The Carrier is obliged to make the initial interpretation of the rules and direct how the work shall be done. If the contract is violated by the Carrier in so doing, it subjects itself to prescribed penalties. Employes as a general rule must perform the work as directed and in case of contract violation, seek redress under the terms of the Agreement. If each employe can interpret the Agreement, however complex, and refrain from doing work with impunity in accordance with his own version of its meaning, the service rendered by the Carrier will be reduced to a chaotic and intermittent condition, a thing which the Railway Labor Act was designed to prevent. Consequently, we are of the opinion that if Claimant felt that he had a grievance when he was required by the Carrier to return to Chicago with car Corot, he should have performed his assignment on car Corot and proceeded to obtain redress for the violation by the procedures provided for in the Railway Labor Act. If the porters also felt that the work on car Corot belonged exclusively to them, the avenues are open for the making of a claim for the work lost. But we cannot affirm a procedure such as Claimant pursued in the present case.

There is no substantial evidence in the record that Claimant was ill and unable for that reason to fill his return assignment. He made no such claim to Carrier's supervisory officials in New York at the time he refused their request to work on car Corot. He in fact offered to work the swing attendant's position in another car on the same train, indicating that he was not disabled by illness at that time.

Claimant also contends that car Corot was too heavy for him to handle and that he was justified in refusing to work it on the return trip. Claimant gave his weight as 122 pounds and his height as five feet, four inches. While this evidence indicates that Claimant was small in stature, it does not conclusively establish that he was unable to do the work. In fact, when Claimant was interrogated as to the relative work on the two cars and the belief of the Carrier that the work on car Corot was less arduous than on car Birch Falls, Claimant's representative refused to permit him to answer. The questions were entirely proper. Awards 2945 and 2946. The record indicates that Claimant's true reason for refusing to go out on car Corot was because it did not provide lounge and buffet service rather than that he was physically unable to perform the work. In any event, he could have taken the car out and performed the work to the best of his ability. Instead, he chose to arbitrarily refuse to perform his work and to risk inconvenience and lack of service to passengers whom the Carrier in the regular course of business had contracted to carry. The penalty assessed is commensurate with the offense.

**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, find 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 the action of the Carrier in suspending Claimant from service for thirty days was not in violation of applicable Agreements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1946.