

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of J. Chapman who is now, and for a number of 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 May 24, 1946, deny the claim filed by the Organization for and in behalf of Attendant Chapman for the sum of \$22.12, which the Organization maintains was due and payable to Attendant Chapman for the pay period of October 16-31, 1945. The Company refused to pay Attendant Chapman the above-mentioned sum, which refusal, the Petitioner maintains, was in violation of the rules of the Agreement between The Pullman Company and its Porters, Attendants, Maids, and Bus Boys.

And further, for Attendant Chapman to be paid the sum of \$22.12 as contended for in the original claim.

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

Your Petitioner further sets forth that in such capacity it is duly authorized to represent J. Chapman who is now, and for sometime past has been, employed by The Pullman Company as an attendant operating out of the Commissary Chicago District.

Your Petitioner further sets forth that in line with his regular duties, Attendant Chapman was assigned as attendant on Line 5197 operating between Chicago and New York on the New York Central Railroad and in the course of his regular assignment he reported for said line on October 25, 1945, which line was due to leave Chicago at 12:00 noon. When he reported for this assignment, he was informed by the sign-out clerk that his car and the lounge car had been cut out, and that he would not be able to make the trip, whereupon Attendant Chapman returned to his home. He remained in town until he was due out on his next trip, on the 29th of October, 1945, at 12:00 noon. He went out on this run in his regular turn, missing one trip.

Your Petitioner further sets forth that Attendant Chapman should be paid for this trip under the second paragraph of Rule 43. His book was signed for three hours for a "called but not used" and that is all. Under date of February 8, 1946, the Brotherhood of Sleeping Car Porters filed a claim for and in behalf of Attendant Chapman for the sum of \$22.12 to

OPINION OF BOARD: The parties agree that the applicable Rule requires that:

"Where a regular assignment has been temporarily discontinued due to causes other than 'acts of God,' an employe affected, when at his home station, shall be placed at the top of the extra list and shall be subject to any assignment that will make him available for his next regular trip, if possible, or otherwise within a reasonable time. He shall not receive less credit than what he would have earned on his regular run because of the temporary discontinuance of his regular assignment."

There is no dispute that the run of the claimant, Chapman, was "temporarily discontinued" and that this was due to causes other than "acts of God".

The Carrier insists that in compliance with this Rule the claimant was placed at the top of the extra list and on the same day was offered an assignment which would have made him available for his next regular trip. This the claimant flatly denied.

The case resolves itself to the one question of facts as to whether the Carrier did offer claimant an assignment as contended.

Claimant in a letter to the President of the Chicago Division, Brotherhood of Sleeping Car Porters, stated that he was not offered any assignment on the day in question but that they did "sign his book for three hours called but not used." He also states in an affidavit that he was not offered such an assignment.

The Carrier has filed as an exhibit a photostatic copy of the signout sheet for the day in question which shows Chapman's run blanked on that date. The sheet bears a notation by Chapman's name to the effect that he "refused 2506" an assignment which would have complied with the rule. The Carrier has also filed and made a part of the record the affidavit of Sabina Bednarski that she was acting as Signout Clerk on the day in question; that Chapman did refuse the assignment on Line 2506 and that she made the notation of his refusal on the signout sheet.

It was shown that Watson (first out on Attendant extra list) was used on Line 2506, 10/26.

If the notation was placed on the signout sheet at the time of the occurrence by the signout clerk it was placed there either as a memorandum of a fact or as a deliberate act of fraud on the part of the clerk. No reason is suggested for such a fraud being perpetrated. Another on the Attendant extra list was assigned to the run. This shows definitely that the run was available for an extra and no reason is suggested for not offering it to claimant rather than to the extra who was used.

An intimation that the notation was placed on the sheet later amounts to an accusation of even more deliberate fraud—an attempt to manufacture a defense. There is no evidence to support such an accusation. The clerk said that the notation is in her handwriting.

The burden of proving the claimant's case was on the Organization. We are of the opinion that the preponderance of the evidence tends to prove that the claimant did refuse the assignment on 2506.

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 Employees involved in this dispute are respectively carrier and employees 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 applicable rule was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1948.