

Award No. 5012  
Docket No. PM-4928

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS  
THE PULLMAN COMPANY

STATEMENT OF CLAIM: \* \* \* for and in behalf of Harvey McNeal who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Chicago Northern District

Because The Pullman Company did, under date of July 21, 1949, deny the claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of Harvey McNeal in which the Organization claimed that H. McNeal had been unjustly treated in that he was removed from his assignment at a place called Columbus, Nebraska without justification, and as a result thereof he lost wages because of not being allowed to complete the trip.

And further, for Harvey McNeal to be allowed the claim filed for and in his behalf as above stated, and for him to be paid the wages lost as a result of the action taken against him in this case.

OPINION OF BOARD: Porter McNeal, an extra, was assigned to car in line 301, Chicago to Oakland, on trip December 23-26, 1948, with Pullman Conductor Smith in charge. On arrival at Columbus, Nebraska, about 12:30 P.M., December 24, McNeal was put off the train by Train Conductor Jackson on account of alleged improper actions. McNeal deadheaded from Columbus to Chicago where he arrived at 1:30 P.M. on December 25. His next service was on the following day.

On January 22, 1949, the Organization complained that McNeal was removed from his assignment and put off the train without justification and asked that he be compensated for wages lost as a result of that action. A hearing on the grievance was requested and granted. At its close the Carrier found McNeal was justly removed from the train and refused to pay the wage loss, now agreed upon by the parties as amounting to \$24.41.

Following disposition of the grievance matter the Carrier preferred charges against McNeal for arbitrary and belligerent conduct on the train and for assaulting the Pullman Conductor. After a hearing on such charge he was notified the charges had been established and that his record was being assessed with a warning and that a notation to that effect had been placed on his service card. In Award 5011, this day adopted, the Carrier's action in that respect was upheld. Notwithstanding we have reviewed the record in that case in connection with the one now involved and have again concluded that McNeal's removal from the train under the existing conditions and circumstances, cannot be held to have been unjustified. It follows all phases of the instant claim involving that particular matter must be denied.

The conclusion just announced does not mean, however, that the claimant is not entitled to have the portion of his claim for wages sustained. Rule 52 of the current Agreement so far as pertinent reads:

"If an employe shall have been held out of service pending investigation for a longer period than is represented by the discipline administered, he shall be compensated for the wage loss, if any, suffered by him for the time in excess of the disciplinary period. Such compensation shall be the amount of wages he would have earned, less compensation received in other employment."

We are convinced that within the meaning of the phrase as used in the above quoted rule the action of the Carrier in removing claimant from the train was the equivalent of and actually tantamount to holding him "out of service pending investigation." Therefore, since the discipline administered was merely a warning the rule requires that he be compensated for the time he was held out of service. The fact the disciplinary action followed the denial of the instant claim is of no consequence.

**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 under the facts and circumstances related in the Opinion claimant is entitled to be compensated for the time he was held out of the Carrier's service.

#### AWARD

Claim sustained in part and denied in part as per the Opinion and the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1950.