Award No. 5741
Docket No. PM-5674

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of W. J. Clark, 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 May 11, 1951, take disciplinary action against Porter Clark by giving him an actual suspension from service of five (5) days, which action was based upon charges unproved and was unjust, unreasonable, arbitrary, and in abuse of the Company's discretion.

And further for the record of W. J. Clark to be cleared of the charge in the instant case and for him to be reimbursed for the five (5) days pay lost as a result of this unjust and unreasonable action.

OPINION OF BOARD: This is a discipline case. There is little substantial dispute as to the controlling facts. The parties are in accord that W. J. Clark, a porter, and another porter were at Washington, D. C., assigned to two Pullman cars carrying military personnel with destination Seattle, Wash., via the Pennsylvania Railroad to Chicago, Ill., and out of Chicago via Chicago, Burlington & Quincy Railroad. On arrival at Chicago the two porters were informed by the Pullman platform agent that their assignment was being "killed" at Chicago, and they were directed to leave their cars. On request of the porters the agent signed their timebooks and released them. They did not however leave their respective cars immediately. They accompanied them to the yard. Before the porters left the cars J. A. Munch, Pullman Assistant Foreman, directed them to remain on the cars. A little later he again directed them to remain on the cars for continuation of the original assignment to Seattle. They refused and left.

The discipline imposed was for refusal to comply with instructions to remain on the car and continue in the assignment after having been released on improper information.

That this porter did refuse to comply with instructions to remain on the car and continue in the assignment there can be no question. In the light of the analysis made of the evidence and the positions taken by the parties, the fact as to whether or not he had been released on improper information is of no great importance. Nothing favorable can reasonably flow from it to the Carrier and nothing unfavorable to the porter.

It appears that J. A. Munch in his capacity as Pullman Assistant Foreman was clothed with authority to direct and require this porter to continue

in this assignment. There does not appear to be any dispute about this proposition.

The substantial contention of the Claimant in this respect is that there was nothing about the Assistant Foreman or his appearance or dress to identify him for what he in fact was, and nothing occurred in the incident or incidents involved to so identify him. Therefore, the porter was not justified in concluding that in giving orders and directions he had authority. And the orders and directions not being with apparent authority it was with right that he disregarded and disobeyed them. In other words, the effect of what he says is that he had been guilty of disobedience to orders, not wilfully but excusably.

Of course from what has been said it follows that if the porter knew of the capacity of Munch he wrongfully refused to remain on the car and continue in the assignment.

It appears reasonable also to say that the orders and directions which he received from Munch, if he doubted the authority thereof, demanded of him that he at the time protest on that ground or take some other step or steps to become certain in relation thereto, either by some pertinent inquiry of Munch or by communication with some one having known authority. It is not disclosed by the record that he did or attempted to do any of these things.

Under these facts and circumstances we are unable to say that the Carrier was not justified in concluding that the refusal to follow the directions of Munch was disobedience of a proper order to remain on the car, and not a failure to remain thereon based upon doubt as to the authority of the person giving it.

This being true, under a long line of precedents, it is not proper for the Division to interfere with the finding.

Taking into consideration the violation and all the attendant circumstances it is not believed that the disciplinary penalty imposed is shown to be excessive.

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 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of May, 1952.