Award No. 6764
Docket No. PM-6937

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * * for and in behalf of J. E. Huntley, who is now, and for many year past has been, employed by The Pullman Company as a porter operating out of Norfolk, Virginia.

Because The Pullman Company did finally, through Mr. W. W. Dodds, Appeals Officer, deny the claim filed by this Organization under date of May 19, 1953 for and in behalf of Mr. Huntley in connection with his having been held out of service in the Norfolk District allegedly because of his physical inability to perform the service.

And further, for Mr. Huntley to be allowed to return to his regular job as a Pullman porter operating out of the Norfolk District, and for him to be paid such sums of money as is due him as a result of his not having been allowed to return to the service as per the contention of Mr. Huntley and the Brotherhood of Sleeping Car Porters as his duly authorized representative.

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 provided for under the Railway Labor Act.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent J. E. Huntley, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the District of Norfolk, Virginia.

Your Petitioner further submits that under date of May 19, 1953 a claim was filed for and in behalf of J. E. Huntley due to the fact that the Company violated certain parts of Rule 45 of the Agreement between The Pullman Company and the Brotherhood of Sleeping Car Porters in that it refused to return Porter Huntley to the service after a period of illness, contending that he wasn't able to do the work. The Company denied the claim and set up its reasons therefor that the medical reports made to the Company were such that it did not feel justified in returning Porter Huntley's name to the seniority roster and allowing him to return to work. In fact, at the conclusion of the Company's decision, Petitioner's Exhibit B, Page 2, the Management had the following to say: "In the light of Huntley's whole medical history, which involves the speed of a malignant disease, I cannot concede that there has been any violation of Rule 45 or of any rule of the working Agreement in the Company's handling of him."

Your Petitioner further represents that an appeal was taken from the decision of Superintendent G. T. Hines in this case up to and including Mr.

The instant dispute is somewhat similar to a dispute in which the parties involved could not agree as to whether the physical condition of Porter Hale Bailey, New York District, permitted him to perform porter work, which dispute was settled under Award 4649, Docket No. PM-4511, with John M. Carmody as Referee. In denying the claim that Hale should be restored to service with pay for time lost the Third Division pointed out that the Company could not be considered as having been harsh or lacking in reasonable consideration for the Petitioner and remanded the case to the parties for an impartial examination by competent medical authority or authorities selected by agreement between the parties to determine Claimant's physical fitness to perform the duties of a Pullman porter. In remanding the case to the parties, the Board set forth its Opinion under **OPINION OF BOARD** as follows:

> "It cannot be said that the Company has been harsh or lacking in reasonable consideration for Petitioner. Its operating officials appear to have been guided entirely by its own medical advisors. Does the Company, however, have the exclusive right to determine fitness solely on the advice of its own medical advisors? This Board, without disputing the right of Carriers to make medical examinations in their own interest, or in the interest of employes, or even to require employes to submit to them, Awards Numbers supra, has also held that this does not give the Carrier the exclusive right to make the determination as to fitness on the advice of their own physician or physicians. Awards Nos. 1499, 2144, 1485.
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> Generally, this Division has not followed the practice adopted in several Awards of the First Division or requiring an impartial reexamination. In Third Division Award No. 1021, however, we said—'Claimant should be reinstated to his position * * * unless within that time (40 days) an impartial examination, made by a doctor or doctors so selected as to insure skill and fairness, shall determine that his physical * * * condition is such as to disqualify him.'
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> In First Division Awards Nos. 1213, 1391, 2420, 2456, 4674, 5069 cited in behalf of Petitioner, we find persuasive argument and precedent for an impartial examination by competent medical authority or authorities selected by agreement between the parties to the dispute. This procedure affords opportunity for judicial determination by technically competent authority."

On the basis of the above facts and the Awards cited the Company maintains that the instant claim should be denied or remanded to the parties for an impartial examination by competent medical authority selected by agreement between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The instant case concerns the physical ability of Claimant to perform the duties of Pullman Porter.

This Board is not competent to substitute its judgment for that of skilled medical men in determining the question of the physical fitness of an employe to work.

We find persuasive argument and precedent for an impartial examination by competent medical authority or authorities selected by agreement between the parties to the dispute, in Awards 4649, 4816, 5815 and Awards cited therein.

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 claim for restoration to service with pay for time lost, is denied. We remand the case to the parties for an impartial examination by competent medical authority, or authorities, selected by agreement between the parties to this dispute to determine Claimant's physical fitness to perform the duties of a Pullman Porter.

AWARD

Claim disposed of as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of September, 1954.