

Award No. 12791

Docket No. PM-14402

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of E. E. Bryant, who is presently employed by the Chicago, Burlington & Quincy Railroad Company in the Dining Car Department, presently operating as a porter or porter-waiter.

Because the Chicago, Burlington & Quincy Railroad Company did finally through the decision of Mr. E. J. Conlin, Staff Officer, deny the claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of E. E. Bryant, originally under date of April 13, 1963, in which the Organization contended that the Management denied Mr. Bryant the right to exercise his seniority and occupy a position in the Dining Car Department on Trains 17 and 18, to which the Organization contends he was entitled according to the rules of the Agreement then in effect governing the wages and working conditions of dining car employees of the Chicago, Burlington & Quincy Railroad Company.

And further, for E. E. Bryant to be allowed to exercise his seniority and occupy the position on which he bid as above mentioned, and for him to be paid for any wage loss suffered by him by reason of being denied the right to exercise his seniority.

EMPLOYEES' STATEMENT OF FACTS: Your Petitioner, The Brotherhood of Sleeping Car Porters, respectfully submits that it is duly authorized to represent all dining car employees employed by the Chicago, Burlington & Quincy Railroad, as it is provided for under the Railway Labor Act. And in such capacity, it is duly authorized to represent E. E. Bryant, who is now and for some years past, has been employed by the Chicago, Burlington & Quincy Railroad Company as a dining car employee in the capacity of waiter, waiter-porter, porter-waiter and porter.

Your Petitioner further represents that under date of March 20, 1963, Mr. Bryant, exercising his rights and privileges under the contract governing the class of employees of which he is a part, submitted a request to be assigned to a coach porter job on train known as the California Zephyr.

After having been refused the right to be given above mentioned assignment, Mr. E. E. Bryant filed a claim, as provided for under the then existing agreement governing the class of employees of which Mr. Bryant was a part,

5. The Petitioning Organization has been aware of this restriction for some period of time and has not questioned it, and even in the instant case, do not question the propriety of his restriction to coach porter work only. This inconsistency illustrates the lack of merit to the claim.

For the reasons alleged herein, this claim must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant's seniority dates from July 25, 1946 on the waiter's roster. Initially, he was employed as a waiter but his duties are best described as those of a porter and porter-waiter. During his period of service with Carrier prior to the instant dispute, Claimant has been the subject of a number of adverse reports concerning the performance of his duties. Certain restrictions have been imposed by the Carrier arising out of the Claimant's past service record which are as follows:

"May 6, 1949 — Claimant restricted to coach porter work only because of lack of ability.

April 6, 1950 — Claimant disqualified as a coach porter on the California Zephyr.

August 28, 1958 — Claimant was dismissed from the service for cause.

November 13, 1958 — Claimant was reinstated by the Carrier after acknowledgment of Carrier Form 2741-A which contained pre-existing restrictions from holding assignments on Trains Nos. 1, 10, 17 and 18."

All of the above restrictions were still in effect at the time that the Claimant submitted his bid for service on the California Zephyr on March 20, 1963.

The record further discloses that the Claimant was the subject of a series of reprimands from the Carrier arising out of his service record during the period following his reinstatement in 1958 to 1963. The Petitioner contends that references to such occasions by the Carrier are self-serving and have no probative value. However, the undisputed contention of the Carrier is that on two of these occasions, a representative of the Organization was invited to be present and in each case, the complete record was made available to both the Claimant and the Organization. Therefore, we find that the Carrier exercised due diligence in advising the Organization with respect to the employment record of the Claimant during the period in question.

The Petitioner contends that the Carrier denied the Claimant his "right" to exercise his seniority and occupy a position in the Dining Car Department on Trains 17 and 18. The Claimant's request for such assignment was based upon his admitted seniority and purported fitness and ability. The Petitioner argues that the Carrier took undue advantage of the Claimant when it required him to agree to the restrictions attached to his reinstatement as a condition precedent. Petitioner maintains that requiring the Claimant to agree that future derelictions of duty would result in permanent severance constitutes an unheard of disciplinary action obtained under duress.

The Board's attention is directed by the Petitioner to our Award No. 11339 involving a dispute between the same parties and under the same Agreement. In this case a chef cook had been denied the opportunity to exercise his seniority to obtain a posted position on certain trains. The Board held that under Rule 16 (a) of the Agreement that the evidence established that the Claimant's selection would not have impaired the efficiency of the service. The gravamen of this finding was based upon the ability and fitness of the Claimant and whether or not he was capable of fulfilling a particular job assignment. Although his prior employment record was fully discussed and carefully considered, the decision turned upon the grievant's necessary ability to perform the work.

In the case before us, the Claimant is not seeking a position requiring greater basic fitness and ability. Since 1949, he has been restricted to the work of a coach porter and he does not now seek to have that restriction removed. Unlike the situation in Award No. 11339, the record here discloses a continuing pattern of unsatisfactory conduct on the part of the grievant following his reinstatement in 1958 up to the time of the instant dispute. Moreover, there were no continuing restrictions involved in Award No. 11339 as in the instant proceeding and, thus no previous efforts to remove such restrictions as were instituted on behalf of this Claimant in 1959.

The Carrier contends that the restrictions imposed upon the work of the Claimant are not unusual and have often been instituted under similar circumstances in the past. In view of the Claimant's history of unsatisfactory service, as partially evidenced by his acknowledgement thereof, we find that the Carrier did not exceed its authority under the controlling Agreement by refusing the Claimant's request for an assignment on Trains 17 and 18. Accordingly, we shall deny the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1964.