

Award No. 18107

Docket No. MS-18712

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Arthur W. Devine, Referee

## PARTIES TO DISPUTE:

MR. HARVEY ALBERS

THE BALTIMORE AND OHIO RAILROAD COMPANY

**STATEMENT OF CLAIM:** As requested by the Adjustment Board, I am sending 15 copies of my letter and I will try to explain why I thought I was given a raw or dirty deal by the C&O - B&O Railroad. I started working for the Pullman Company when I was 18 years old, in their laundry on February 29, 1929, and in November, 1941, I transferred to the passenger department as a Pullman Conductor. I held this job until the railroads started operating their own sleeping cars on January 1, 1969.

About June or July, 1968, knowing that the railroads were going to take over the sleeping car service on Jan. 1, 1969, I started to look for a job as protection. I was given a good lead, that the C&O - B&O Railroad wanted a mature man to drive one of their little pick-up trucks. I contacted Mr. Kerr, C&O - B&O, Personnel, Cincinnati Union Terminal, Cincinnati, Ohio. I was given all of their tests and passed all except the last one, which they said showed arthritis of the back or spine. After a conversation with my Superintendent, he went to see Mr. Kerr and told him that there wasn't anything wrong with my back as I couldn't carry all those heavy passengers' bags through the day coaches to the Pullman cars and do this every trip, year in and year out, and be high man in train sales. Mr. Kerr then told my Superintendent, he would not hire me and I took for granted that I really had arthritis of the back. Later I was told that any man over 40 years of age, having X-rays taken of their back were bound to show arthritis of some kind. At that time I was 57 years old and that kept me from getting the job, etc.

**OPINION OF BOARD:** The record indicates that Claimant was employed by the Pullman Company for a period of years and was employed as a Pullman Conductor when the Pullman Company discontinued operating sleeping car service effective as of January 1, 1969.

Being aware of the fact that the Pullman Company planned to cease operation of sleeping car service Claimant endeavored to secure other employment and made application for employment with the Baltimore & Ohio Railroad Company. His application for employment was not approved.

The jurisdiction of this Board is confined to disputes between an employee or employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. (See Section 3, First (i) of the Railway Labor Act).

Since Claimant was not an employe as that term is defined in the Railway Labor Act no grievance or dispute exists over which this Board has jurisdiction and the claim must be dismissed.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 does not have jurisdiction over the dispute involved herein.

**AWARD**

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.