

Civ 47-371

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BAYARD RUSTIN,

Plaintiff,

-against-

THE SOUTHERN RAILWAY COMPANY,

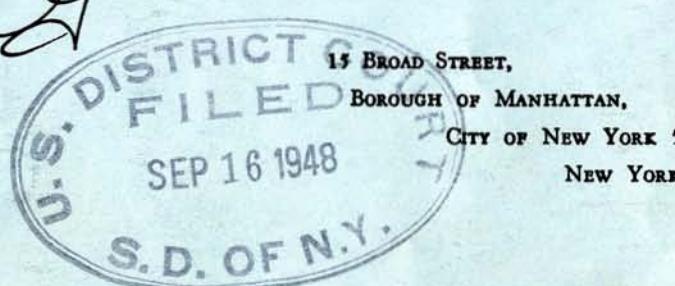
Defendant.

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PETITION FOR REMOVAL FROM THE
STATE COURT TO THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK A [REDACTED]

DAVIS POLK WARDWELL SUNDERLAND & KIENDL

ATTORNEYS FOR DEFENDANT



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BAYARD RUSTIN, :
Plaintiff, : PETITION FOR REMOVAL
-against- : FROM STATE COURT TO
SOUTHERN RAILWAY COMPANY, : THE UNITED STATES
Defendant. : DISTRICT COURT FOR
: THE SOUTHERN DISTRICT
: OF NEW YORK

-----x
The petition of Southern Railway Company, the sole defendant in the above-entitled action, respectfully shows to the Court:

1. That this action is a suit of a civil nature at law brought in the Supreme Court of the State of New York, County of New York. It is a suit of which a District Court of the United States has original jurisdiction, since the suit is a controversy in which every issue of law and fact is wholly between citizens of different states, as will appear more fully hereinafter.

2. That the controversy herein, as appears from the face of the complaint, a copy of which is attached hereto, in substance is as follows: An action at law by the plaintiff against the defendant to recover Five Thousand Dollars (\$5,000) damages for personal injuries allegedly resulting from defendant's refusal to permit the plaintiff to make use of the facilities of its dining car while the plaintiff was a passenger on defendant's train.

3. That the matter in dispute in this action, as appears from the face of the complaint, exceeds the sum or value of Three Thousand Dollars (\$3,000) exclusive of interests and costs.

4. That at the time of the commencement of this action your petitioner, the defendant in the above-entitled action, was and still is a foreign corporation organized and existing under and by virtue of the laws of the Commonwealth of Virginia, was then and still is a citizen and resident of the said Commonwealth of Virginia, and at the time of the commencement of the action was not and is not now a citizen and resident of the State of New York.

5. That upon information and belief the plaintiff at the time of the commencement of this action was and still is a citizen and resident of the State of New York.

6. That this action was commenced by the service of a summons and complaint upon your petitioner on September 1, 1948. Twenty days have not elapsed since the commencement of the action. Your petitioner has not answered or made any motion with relation to the complaint, and your petitioner has not waived or prejudiced in any way its right to remove this action to a District Court of the United States.

7. That your petitioner files hereto a bond with good and sufficient surety in the promised sum of Five Hundred Dollars (\$500) conditioned that the defendant will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that this case was not removable or was improperly removed.

8. Your petitioner has a good and sufficient defense to this action.

9. No previous application has been made for the relief herein sought.

WHEREFORE your petitioner, the defendant in the above-entitled action, prays that this action be removed to the United States District Court for the Southern District of New York, from the Supreme Court of the State of New York, County of New York in accordance with the provisions of the Judicial Code of the United States (28USCA Sections 1441-1450) and that this Court grant to your petitioner such other further relief as the Court may deem proper.

Dated: New York, New York, September 16, 1948.

SOUTHERN RAILWAY CO.

by

J. J. Maher
Secretary

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

J. J. MAHER being duly sworn deposes and says:

That he is an officer of Southern Railway Company, the petitioner above-named, to-wit: the secretary thereof; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters stated to be alleged upon information and belief and as to those matters he believes it to be true.

Subscribed and sworn to before me:

this 16th day of September, 1948.

William H. Mennis

WILLIAM H. MENNIS
Notary Public, State of New York
Residing in Bronx County
Bronx Co. Clk's No. 71 Reg. No. 191-M-9
Certificate filed in
N.Y. Co. Clk's No. 359 Reg. No. 621-M-9
Commission Expires March 30, 1949

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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BAYARD RUSTIN, :
Plaintiff, :
-against- : COMPLAINT
SOUTHERN RAILWAY COMPANY, :
Defendant. :
----- x

Plaintiff for his complaint herein alleges:

FIRST: That at all times hereinafter mentioned the plaintiff was and is a resident of the State of New York and a citizen of the United States.

SECOND: That upon information and belief the defendant is a corporation duly organized under the Commonwealth of Virginia maintaining various offices for the purpose of doing business in the County and State of New York.

THIRD: That upon information and belief the defendant at all times hereinafter mentioned has been and is now a common carrier for hire, owning, maintaining and operating railroad accommodations throughout the several states of the United States, particularly, but without limitation to the foregoing, between Alabama, Georgia, North Carolina, South Carolina, Virginia, Washington, D. C. and New York.

FOURTH: That on or about September 18, 1947, defendant purchased in New York City from defendant railroad, a Pullman ticket to Knoxville, Tennessee, on trains owned

and operated by the defendant railroad.

FIFTH: That on or about the evening of September 20th, 1947, plaintiff boarded the said train at Philadelphia about 8.23 p.m. The said ticket which he had purchased as aforesaid was for lower berth 9, car N.W. 14. ticket #2023.

SIXTH: That on the morning of the 21st September, 1947, plaintiff attempted to make use of the facilities of the dining car on said train owned and operated by defendant railroad, but was prevented from doing so by agents, servants and employees of said defendant.

SEVENTH: That plaintiff, a Negro, was refused service by defendant's agents, servants or employees in the course and general scope of the said agents, servants or employees' employment by the defendant and while they were acting or attempting to act in the defendant's interest.

EIGHTH: That said acts were in violation of the plaintiff's rights as a passenger on said train.

NINTH: That the said acts of the defendant's agents and employees were designed and intended to place upon the plaintiff the stigma of inferiority and to humiliate and degrade the plaintiff publicly, in the view of all other passengers, thus causing the plaintiff great physical and mental discomfort and injury.

TENTH: That in addition to the above, the aforesaid acts by the defendant, its agents and employees, was in violation of the Constitution, Laws and Statutes of the United States.

ELEVENTH: That at all times herein above set forth the plaintiff conducted himself in an orderly and

proper fashion.

TWELFTH: That as a result of the aforesaid acts, plaintiff has suffered damages in the amount of \$5,000.00.

WHEREFORE: Plaintiff demands judgment in the amount of \$5,000.00 for damages suffered by him, together with such punitive damages as the Court may find to be just, together with costs and disbursements of this action.

RACHLIN, MIGDAL, COHEN & DIAMOND, ESQS.,
Attorneys for Plaintiff
Office and P. O. Address
One Madison Avenue
Borough of Manhattan
City of New York.