

Award No. 4200

Docket No. 4025

2-PULL-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement when they:

(a) improperly assigned other than coach cleaners to perform coach cleaner's work.

(b) That under the current agreement the Carrier be ordered to additionally compensate coach cleaner Mr. R. Cisneros, San Antonio, Texas, for two hours forty minutes at the time and one half rate.

EMPLOYES' STATEMENT OF FACTS: Car Cleaner R. Cisneros, hereinafter referred to as the claimant, is employed by the Pullman Company, hereinafter referred to as the carrier, at San Antonio, Texas, as a car cleaner.

Under date of October 30, 1960, the carrier instructed two porters to clean cars on Texas Eagle No. 21 after the train arrived at San Antonio, Texas. The work consisted of washing basins, toilets, and sweeping, which work is properly the work of coach cleaners.

This dispute has been handled with all carrier officers with whom such matters are subject to be appealed, without satisfactory results.

The agreement effective June 16, 1961, is controlling.

POSITION OF EMPLOYES: It is submitted that the scope rule stating as follows:

The fact is indisputable that cleaning of cars is not the exclusive work of car cleaners. In fact, porter cleaning is comprehended by the porters' Agreement, and such work has been performed by porters for many decades. In Third Division Award 6365 (McMahon) of the National Railroad Adjustment Board, the Board stated, under **OPINION OF BOARD**, as follows, with regard to its authority to add or detract a meaning to the agreement:

"It is the duty of this Board to interpret the rules of the Agreements as they are made. We are not authorized to read into a rule, that which is not contained, or by an award add or detract a meaning to the Agreement which was clearly not the intention of the parties. Many awards have been made by this Board, on this subject, and we refer to only a few as affirming our position. See Awards 4439, 5864, 5971, 5977."

See, also, Third Division Awards 2622, 5079, 6291, 6595, 6833, 6828, 5994, 5500, 5864, 8219, 9108 and 9198 and Second Division Award 1474.

The company submits that when the organization presents a claim it assumes the obligation of presenting a clear and logical account of the facts and of citing rules which support its claim. In the instant case, the organization has not assumed this responsibility. In Third Division Award 4011 (Parker), the Board stated, under **OPINION OF BOARD**:

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance . . ."

Also, see Awards 5418, 5758, 3523, 3477 and 2577.

CONCLUSION:

In this ex parte submission the Company has shown that the work performed by Porters Warren and Chambers was performed while they were still on duty and falls within the scope of porters' duties; therefore, no violation of Rule 89 occurred and Cleaner Cisneros is not entitled to any payment for October 30, 1960. Additionally, the company has shown that awards of the National Railroad Adjustment Board support the company's position in this dispute.

The claim in behalf of Cleaner Cisneros is without merit and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On October 30, 1960, Missouri Pacific train 21, carrying three Pullman cars, arrived 58 minutes late at San Antonio, Texas, namely, at 1:23 P. M.

instead of at 12:25 P. M. as scheduled. After passengers had been unloaded, the train was moved around the wye and then proceeded to the Missouri Pacific yards. Thereafter, it was moved to the Missouri Pacific Passenger Depot for the reception of passengers. It left San Antonio as Missouri Pacific train 22 at 2:40 P. M., ten minutes after the regularly scheduled departure time.

After passengers were unloaded at San Antonio, two car cleaners boarded the train and cleaned the cars while the train proceeded around the wye and to the yards. In addition, the three Pullman car porters remained in their respective cars and were released from duty in the yards at about 2:05 P. M.

Agent-Foreman W. P. Mahaffey, an employe of the Carrier, met the train upon its arrival at San Antonio and instructed two of the three porters to clean the cars (washing basins and toilets, and sweeping) as asserted by the Organization, or reminded the porters to gather up trash and put away equipment as contended by the Carrier. The Organization filed the instant grievance on behalf of coach cleaner R. Cisneros who was on his day off. It contended that the latter should have been called to perform the cleaning work in accordance with Rule 89 of the applicable labor agreement. It requested compensation for Cisneros in the amount of 2 hours and 40 minutes at the rate of time and one-half. The Carrier denied the grievance on the ground that the work performed by the two porters was properly assigned to them pursuant to the Carrier's "Instructions for Car Service Employes".

1. Rule 89 of the labor agreement on which the Organization mainly relies reads, as far as pertinent, as follows:

"Car cleaners' work shall consist of cleaning, acid scrubbing and washing of cars **in yards and stations . . .**" (emphasis ours.)

The relevant part of the "Instructions for Car Service Employes" cited by the Carrier in defense of its position reads as follows:

"Cars shall be kept clean and well ventilated at all times while **en route . . .**" (emphasis ours).

The parties are in dispute as to whether the work of the car porters was performed "in yards and stations" within the purview of Rule 89 or whether it was performed while the cars were "en route" as contemplated in the Instructions. We are of the opinion that the cars were no longer "en route" after the train had arrived at San Antonio. Any cleaning work performed thereafter was performed either at the San Antonio station or in the Missouri Pacific yards. Hence, Rule 89 and not the Instructions are here applicable.

2. The law of railroad labor relations is firmly settled that work embraced within the scope of a labor agreement cannot, as a rule, be removed therefrom and assigned to employes not subject to its terms. See: Award 4193 of the Second Division and cases cited therein. It is undisputed that the porters are covered by a different labor agreement from that applicable to car cleaners. The evidence on the record considered as a whole shows that the two porters gathered up trash in their respective Pullman cars and that one of them also wiped out wash basins after passengers were unloaded at San Antonio. This was cleaning work which belonged to the carmen's craft in accordance with the clear and unambiguous wording of Rule 89. See: Awards 3595 and 3891 of the Second Division. Accordingly, we hold that

Rule 89 was violated when the Carrier's Agent-Foreman permitted or instructed the two porters to perform said work.

3. The principle is well established that a party to a labor agreement which has violated the terms thereof is generally subject to an appropriate penalty. However, this is not a hard and fast rule permitting of no exceptions. See: Award 804 of the Second Division. Here, the Carrier's violation of Rule 89 was minor and purely technical. It was caused by the operational needs to service train 21 in a shorter time than the one normally scheduled therefor. In view of these peculiar circumstances and without setting a precedent for future cases, we are of the opinion that no penalty is warranted in the instant case.

AWARD

Claim partly sustained and partly denied in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1963.