

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

**THE BROTHERHOOD OF SLEEPING CAR PORTERS
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: "Porter Bruce Hall claims payment in the amount of \$9.70 applied to deadheading performed, Spokane to Chicago, involving period 10:00 A. M., Pacific Time, June 10 to 8:55 A. M. Central Standard Time, June 12, 1939."

JOINT STATEMENT OF FACTS: "Under date May 2, 1939 a bulletin was issued by Superintendent of Sleeping and Dining Cars Mr. Wm. Dolphin advertising a vacancy for a sleeping car porter on Trains Nos. 15 and 16 between Chicago and Tacoma. Porter Hall was regularly assigned as such to Trains Nos. 7 and 8 as between Spokane, Washington and Butte, Montana. He made application for the vacancy on Trains Nos. 15 and 16 and inasmuch as he was the senior applicant the position was awarded him in accordance with bulletin dated May 20, 1939 which resulted in him deadheading Spokane to Chicago and claiming payment for twenty-four (24) hours on the basis of monthly rate of \$97.00 or \$9.70.

"The payment claimed is based upon rule 8 contained in the schedule of rules governing rates of pay, hours of service and working conditions of porters on sleeping cars, parlor cars and coaches reading:

'Employees deadheading, either on passes or cars, on company business (except in connection with witness service) shall receive credit of twelve (12) hours for each twenty-four (24) hour period and actual time up to twelve (12) hours for less than a twenty-four (24) hour period, time to be computed from time required to report until arrival at destination with a minimum credit of eight (8) hours where overnight trips are involved.'

"The parties to this dispute request the privilege of oral and other presentation at the time hearing is held."

POSITION OF EMPLOYEES: "This claim is being initiated by the Brotherhood of Sleeping Car Porters as is provided for under the provisions of Rule 46 of the agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Brotherhood of Sleeping Car Porters, governing the rates of pay, hours of service and working conditions of sleeping car and chair car porters, effective June 1, 1939.

"Specifically, this claim is for and in behalf of Porter Bruce Hall for the sum of \$9.70 which sum, the organization maintains, is due to Porter Bruce Hall for work performed in accordance with the provisions of the contract and for which the Management has refused to compensate Porter Bruce Hall.

While of course it was necessary that this vacancy be bulletined in accordance with the schedule rules yet it will be appreciated that in the event there were no applicants, or pending the assignment of an employe by bulletin, the vacancy would be filled by a porter from the extra list at Chicago. In the event a vacancy occurred at an outlying point as, for instance, the position of porter on Trains Nos. 7 and 8 as between Spokane, Washington and Butte, Montana, in bulletining a vacancy of this kind it is and has been the practice to pay deadhead time applied to the employe who would be awarded the position because it is only reasonable to assume that a vacancy at an outlying point will necessarily be filled and in the event no applications were received we would be compelled to deadhead an employe from the point where the extra list would be maintained and this would be deadheading on company business. In other words, where a vacancy exists the same must be filled and in the event deadheading is necessary we of course would pay for same but where a vacancy occurs at the point where the extra list is maintained, the vacancy could be filled without deadheading therefore any deadheading involved would result from the exercise of seniority and could not be considered as deadheading on company business.

"However in giving consideration to the provisions of current schedule rule 8 above quoted, particularly that part reading:

'Employes deadheading, either on passes or cars, ON COMPANY BUSINESS * * *' (The caps are ours.)

it is felt the Board will realize that inasmuch as the vacancy existed out of the point where the extra list would be maintained, Porter Hall deadheading Spokane to Chicago would be in the exercise of seniority and could not be considered as deadheading ON COMPANY BUSINESS.

"While of course our schedule with the Brotherhood of Sleeping Car Porters has only been in effect since June 1, 1939 yet the principle involved in this dispute is nothing new and for all of the years past we have not allowed payment applied to deadheading when an employe at an outlying point would have deadheaded to Chicago, the point where the extra list is maintained, to accept service out of that point because this deadheading would result from the exercise of seniority and was caused only by the desire of the employe to accept service out of Chicago.

"As a matter of information to the Board will advise that following Porter Hall having deadheaded to Chicago the vacancy on Trains Nos. 7 and 8 as between Spokane, Washington and Butte, Montana was bulletined and Porter Hall again bid in that assignment which necessitated him deadheading from Chicago to Spokane for which he was paid in accordance with current schedule rule 8.

"In giving consideration to the circumstances as described and in view of payment applied to deadheading being confined to COMPANY BUSINESS, it is believed the Board will realize the payment claimed should not be allowed and will so decide."

OPINION OF BOARD: Rule 8 of the Agreement, dealing specifically with allowances for deadheading, appears to cover expressly the situation here involved. While the claimant's exercise of seniority, grounded in rights established by the Agreement, may be deemed to be guided by his own ends, the deadheading, in furtherance of his actual assignment, was clearly on company business. This interpretation is confirmed by the carrier's allowance to the same employe for deadheading in the opposite direction after the exercise of his seniority rights. In neither case was the carrier free to use a porter from the extra board, and thereby preclude the necessity of deadheading, since the claimant had bid upon and was assigned to the runs involved. Once assigned, he was obligated to present himself for duty at the point to which assigned; and the deadheading was an unavoidable incident of the performance of this obligation. There can be no ques-

tion, therefore, that the deadheading here involved was on company business; and since, in such circumstances, both the right to payment and its measure are expressly covered by the Agreement, the claim as submitted, in conformity with these provisions, must be held to be a valid one.

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 employe involved in this dispute are respectively carrier and employe 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 evidence of record discloses a violation of Rule 8 of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of June, 1940.