Award No. 4862

Docket No. PM-4863

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of A. Owens, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the District of Nashville, Tennessee.

Because The Pullman Company did, under date of February 11, 1949, deny the claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of A. Owens in which it is contended that the Company violated the Agreement then and now in effect between The Pullman Company and its Porters, Attendants, Maids and Bus Boys because of its failure to allow Porter Owens to go out on a certain assignment that left Nashville, Tennessee in such service to New Orleans on December 30, 1948.

And further, for Porter Owens to be compensated as contended for in said claim for time lost on account of his not being signed out in proper place as set forth by the Organization in said claim.

EMPLOYES' STATEMENT OF FACTS: Your Petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is duly authorized to represent all porters, attendants, maids and bus boys employed by The Pullman Company for all purposes of the Railway Labor Act.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent A. Owens, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of Nashville, Tennessee.

The Petitioner further sets forth that Owens arrived in Nashville, Tennessee on December 29, 1948 at 7:35 P.M., having deadheaded on L & N Train No. 7 from Louisville, Kentucky, a trip which involved 6 hours and 25 minutes credited time. Under the rules of the current agreement, Porter Owens has a layover expiring 8:25 A.M., December 30, 1948.

Porter Owens on his arrival in Nashville on December 29th, reported to the Platform Agent and was directed to report the following morning, December 30, 1948. On December 30, 1948, he reported to the Signout Clerk and was instructed by the Signout Clerk to report back at 3:00 P.M., December 30th. Porter Owens called attention to the fact that he understood there was some Special going out around 3:00 P.M., and whether or not he was eligible to get a car that was going out later on in that afternoon. Porter Owens was informed by the Agent, Mr. McNail, that that assignment for the afternoon of December 30th had been made the previous day, and that he wasn't entitled to be assigned to the Special Service Assignment reporting at 3:00 P.M., on the afternoon of December 30th.

"It is first urged that in view of the quoted portion of Rule 38(f) the Company had no right to call Travis the second time on August 9 and give him the August 10 assignment but was required to wait until the morning of the latter date to ascertain whether there might be other conductors in line for the vacancy. That position requires too strained a construction of the rule and is not tenable. In our opinion the word 'used' must be regarded as meaning 'assigned'. The construction placed upon such term by the Organization would mean that the Company would have to wait in many instances until shortly before an operation was to begin before it could call a conductor a second time on the same day, an impractical result and one certainly not contemplated by the parties at the time the Agreement was executed. Since all available conductors had been assigned when Travis received his second call there was no violation of the rule in giving him the MacDill Field assignment."

Clearly, Award 4013 supports the Company's position in the present dispute that Owens was not available for assignment purposes, as the term "available" is used throughout Pullman service.

CONCLUSION

The Company submits that the available extra porters of the Nashville Agency were properly assigned on December 29, 1948, to the special service movement departing Nashville en route to New Orleans, December 30. In all instances, the available porters were assigned in the order of the expiration of their layovers in accordance with the provisions of Rule 46. Further, Award 4013 supports the Company's position that Management properly should fill all known assignments during the regular signout period for the next 24 hours.

The Organization's claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim charges a violation of Rule 46. The Organization contends that under Rule 46, no sign-out period is provided and the Company must make assignments on a "first-in, first-out" basis, without reference to a porter's availability at the time of the sign-out period. The evidence is that the material provisions of Rule 46 were in effect in the October 1, 1937 agreement and were substantially carried over to the June 1, 1941 agreement. It must be found also that the practice of assignments arising in the next twenty-four hours has been in existence for many years, and that porters arriving subsequent to the sign-out period are not permitted to displace porters assigned during the sign-out period.

Porters do have a knowledge of the general practice of sign-out periods. The Board in Award 4226 said:

". . . However, we may assume that since the man had been a porter for the Carrier for about four years he would know that each District Office had regular sign-out times. . . ."

The evidence that the practice has been in effect for many years was not controverted. Whether the Organization knew of the practice is not material. It is chargeable with knowledge of the workking conditions and methods of payment existing at the time the agreements in 1937 and 1941 were negotiated. If it desired a change in this sign-out practice it should have made this matter the subject of negotiation and agreement. Awards 2436 and 4086. The practice followed by the Company is not inconsistent with Rule 46. The Rule is silent as to the method of administration, but the procedure followed has been in effect for many years without objection from the Organization.

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 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 has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of May, 1950.