

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 J. M. McCarty who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of St. Paul, Minnesota.

Because The Pullman Company did, under date of May 28, 1949, deny the claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of Porter McCarty in which it is contended that Porter McCarty should have been paid the sum of \$11.33 for 12 hours, which Porter McCarty was entitled to be paid for under the rules of the Agreement then and now in effect between The Pullman Company and its Porters, Attendants, Maids and Bus Boys.

And further, for Porter McCarty to be paid the above-mentioned sum of \$11.33 as it is contended for 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 J. M. McCarty, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of St. Paul, Minnesota.

The Petitioner further represents that under date of April 9, 1949, the Brotherhood of Sleeping Car Porters as the duly authorized representative of Porter McCarty, filed a claim with The Pullman Company through Mr. L. J. Bartholomew, District Superintendent of the St. Paul, Minnesota District, because it contended that the sum of \$11.33 was due and payable to Porter McCarty for 12 hours at the \$226.60 per month rate for services performed by him on Special Service Tour, Car McClanahan, March 6-9, 1949.

The Organization further contends that on the three nights that Porter McCarty was on this trip, he only obtained four hours sleep each night, but the Company deducted from his credited hours on this trip, eight hours sleep for each of the three nights.

The Management, under date of May 28, 1949, denied the claim filed by this Organization for and in behalf of Porter McCarty, setting forth the fact that he did get eight hours sleep as was contended by the Company, in a decision rendered by District Superintendent Bartholomew.

McCarty entered a 24-hour sleep deduction for that trip. Also, when questioned by Assistant District Superintendent Maguire, Porter McCarty stated that he received his 8 hours' sleep each night. Finally, Porter McCarty's statement made at the beginning of the trip that he would protest the 8-hour sleep deduction through the Organization clearly shows that he was predisposed to protest whether he was released for 8 hours' sleep each night or not. The claim is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: J. M. McCarty and three other porters were on an "Extended Special Tour" assignment from March 6 to March 9, 1949. The claimant states that he received only four hours instead of eight hours' rest on each of the three nights, but that the Carrier, however, deducted eight hours each night or a total of twenty-four hours for the trip. Payment is requested for twelve hours alleged to have been improperly deducted.

The evidence simply does not support the claim. The accommodations were adequate in that five uppers were allotted for the use of the crew. (Exhibit H) Claimant McCarty, in his own handwriting, in completing his Assignment to Duty Slip, showed he received twenty-four hours' rest. If he did not receive eight hours' rest on each of the three nights, he should have so informed the Assistant Superintendent on March 9th. The evidence in fact is that he told the Assistant Superintendent, in the presence of two other porters, that he received eight hours' rest each night. This evidence was not controverted. McCarty, in view of his admissions in the Assignment to Duty Slip, Time Sheet, and in his conference with the Assistant Superintendent, when the trip was just completed, is now estopped from denying that he received a total of twenty-four hours' rest on the trip. No reason was advanced as to why the Conductor in charge would list twenty-four hours' rest for McCarty if the claimant did not receive this amount of rest. No weight can be attached to the contention that some Company representative approved McCarty's claim for twelve hours and then attempted to rescind approval by drawing a red line through the signature in the absence of evidence as to the identity of the representative.

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 Employees involved in this dispute are respectively carrier and employees 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

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.