

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 W. Reed, 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 Reed in which it is contended that Porter Reed should have been paid the sum of \$11.33 for 12 hours, which Porter Reed 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 Reed 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 Woodrow Reed, 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 Reed, 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 Reed for 12 hours at the \$226.60 per month rate for services performed by him on Special Service Tour, Car Millet, March 6-9, 1949.

The Organization further contends that on the three nights that Porter Reed 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 Reed, setting forth the fact that he did get eight hours sleep as was contended by the Company.

The Brotherhood of Sleeping Car Porters as the duly authorized representative of Porter Reed appealed from the decision of District Superintendent

statement of April 13, 1949 (Exhibit A), lends support to the Company in this dispute. Mr. Maguire stated that upon completion of the trip of March 9 Porters J. M. McCarty, G. Bradley and H. Jefferson, who also were assigned to the Minneapolis Symphony Orchestra tour, reported to the district office. Mr. Maguire asked the porters if they had received their 8 hours' sleep each night and they stated that they had. At that time the porters turned in their Assignment to Duty slips and Mr. Maguire noted that each of the porters had entered 24 hours' rest on his Assignment to Duty slip, the complete entry for the trip being as follows:

	Hrs.	Min.
Total Elapsed Time	79	20
Hours Rest	24	00
Hours on Duty for this Trip	55	20

Although Porter Reed went directly home upon completion of the trip, he later telephoned the district office. At that time he was questioned by Mr. Maguire concerning his time for the trip and Porter Reed stated that the elapsed time of the trip was 79:20 hours, that he received 24 hours' rest and that his net service was 55:20 hours, the identical time reported by the other porters on the trip. Porter Reed also stated that the conductor had signed his time sheet for this time. When Reed subsequently turned in his Assignment to Duty slip, Mr. Maguire examined it and found that the entries thereon checked with the information furnished by Reed over the telephone and with the information shown by the other porters on their Assignment to Duty slips for this trip.

If Porter Reed had not been released for 24 hours' sleep on the trip in question, it is strange that he would report that amount of sleep to Mr. Maguire and make a 24-hour sleep deduction on his Assignment to Duty slip. If a dispute existed between Porter Reed and Conductor Harpster as to the proper sleep deduction, Porter Reed should have made that fact known at the time he conversed with Mr. Maguire on March 9. However, when questioned by Mr. Maguire as to the amount of sleep received, Porter Reed stated that he received 24 hours' sleep and subsequently turned in his Assignment to Duty slip with a 24-hour sleep deduction from the elapsed time of the trip. Such conduct on the part of Porter Reed standing alone casts serious doubt on the validity of his claim.

CONCLUSION

The facts of record support Management in this dispute. The testimony of Conductor Harpster, the supervisory Pullman officer on the Minneapolis Symphony Orchestra tour, establishes the fact that he released Porter Reed for 8 hours' sleep each night, a total of 24 hours for the trip, and that there was space available for Porter Reed to obtain his sleep. Additionally, the claim of the Organization is contradictory to the information furnished the Company by Porter Reed himself. When questioned by Assistant District Superintendent Maguire, Porter Reed stated that he received his 8 hours' sleep each night. Also, on his Assignment to Duty slip turned in to the Company following the trip of March 6-9, 1949, Porter Reed entered a 24-hour sleep deduction for that trip. The claim is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The first question raised by the claim is whether Porter Reed received eight hours or only four hours' rest for each of three nights. The three other porters, Bradley, Jefferson, and McCarty, reported a total of twenty-four hours' rest for the three nights in their Assignment to Duty Slips and in their conferences with the Assistant Superintendent at the conclusion of the trip. No reason was offered as to why a different procedure and different treatment would be accorded Porter Reed in the assignment of a rest period. The Assistant Superintendent stated that although Reed did not go to the office on arrival he called by telephone and reported that he received twenty-four hours' rest. Despite the contention that Reed's copy of the Time Sheet shows a Carrier representative's signature of approval, which

was later lined through with red pencil, the fact remains that no identifiable Company representative verified Reed's claim of twelve hours of rest.

The Organization in this case makes an additional contention that an understanding or "gentlemen's agreement" existed that no daytime sleep would be deducted unless the porter was provided with a room having a door, and thus the four hours, from 4 P.M. to 8 P.M. should not have been deducted.

The Carrier states that such an understanding applied only to military movements. It is clear that Rule 4 was not revised. The party contending that an understanding exists, has the burden of proof and should offer evidence as to when and with whom such an agreement was made. The evidence does not show an understanding existed as to non-military movements.

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 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.