

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of E. Hartsfield, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of Pittsburgh, Pennsylvania.

Because The Pullman Company did, under date of February 16, 1954, deny a claim filed for and in behalf of E. Hartsfield in which it was contended that Porter Hartsfield should have been paid 26 hours and 45 minutes which was due him because of the violation of the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys in the service of The Pullman Company, represented by the Brotherhood of Sleeping Car Porters, Revised, Effective January 1, 1953, in connection with his assignment as an extra man in the Pittsburgh District.

And further, for Porter Hartsfield to be paid for the 26 hours and 45 minutes as set forth in the above-mentioned 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, as it is provided for under the Railway Labor Act; and in such capacity is duly authorized to represent E. Hartsfield, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of Pittsburgh, Pennsylvania.

Your Petitioner further sets forth that under date of January 14, 1954, the Brotherhood of Sleeping Car Porters for and in behalf of E. Hartsfield, filed a claim in which it contended that Porter Hartsfield should be paid for an additional 26 hours and 45 minutes at his regular rate of pay for the last half of December, 1953, which the Organization maintains is due and payable to him as a result of violation of the Agreement in handling his assignment on the 24th day of December, 1953.

Your Petitioner further sets forth that The Pullman Company denied said claim in a letter addressed to Mr. Bennie Smith, 2nd International Vice President, under date of February 16, 1954, contending that the Company was within its rights in that it assigned Porter Rose to an assignment that would have normally gone to Porter Hartsfield; and that it had a right to assign Porter Rose to that assignment under the rules of the Agreement, particularly Rule 43, Paragraph B.

graph (a), which contains reference to a rule upon which the Organization apparently relies, Rule 46, are appropriate.

Paragraph (a), Rule 43, unlike paragraph (b), is concerned with the disposition of porters whose regular assignments are temporarily discontinued due to "acts of God," such as storms, hurricanes, earthquakes, floods and the like. Paragraph (a) provides that employees affected thereby "may be assigned as extra employees in accordance with Rule 46 to service which will make them available for their next regular assignment when resumed." In other words, employees coming under the provisions of Rule 43 (a) may, when their regular assignments are temporarily discontinued, be assigned as extra porters "first-in, first-out" in accordance with expiration of layover, as provided in Rule 46. Also, paragraph (a), in contrast to paragraph (b), does not obligate The Pullman Company to keep the employees affected financially "whole."

The Organization, in its letter of claim to Superintendent Holland, quoted the "first-in, first-out" provisions referred to in Rule 43 (a) and alleged that such provisions were violated by the Company in the instant case. Thus, the Organization is attempting to apply the procedure of Rule 43 (a) to a set of circumstances clearly governed by Rule 43 (b). The Organization either fails to recognize, or will not recognize, the distinction between paragraphs (a) and (b) of Rule 43. In trying to apply the "first-in, first-out" provisions to a case where the porter's regular assignment was **not** temporarily discontinued due to "acts of God," the Organization is clearly in error.

Rule 46. Operation of Extra Employees Out of Home Station, which is contained in the working Agreement under the general heading **EXTRA EMPLOYEES**, is, as the title indicates, concerned with the manner in which assignments are given to extra employees. By specific reference to Rule 46 in Rule 43 (a), regular employees whose regular assignments are temporarily discontinued due to "acts of God," are also subject to the assignment procedure of Rule 46. However, regular employees whose regular assignments are temporarily discontinued due to causes other than "acts of God" are subject to **any** assignment as provided in Rule 43 (b) and the "first-in, first-out" provisions of Rule 46 do not apply to them. In the instant case, Porter Rose was a regular porter whose regular assignment was temporarily discontinued due to causes other than "acts of God." Consequently, Rule 46 did not govern the manner in which Porter Rose was assigned, and the rule is not applicable to this dispute.

CONCLUSION

In this ex parte submission, The Pullman Company has shown that Rule 43 (b) is the controlling rule and that the Company fully complied with the rule in giving Porter J. H. Rose the assignment he received on December 24, 1953. Further, the Company has shown that neither Rule 46 nor any other provision of the working Agreement is applicable to this dispute.

Since Porter Rose was entitled to the assignment he received on December 24, 1953, Porter Hartsfield was not entitled to that assignment. Therefore, the claim in behalf of Porter Hartsfield is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employee or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim for compensation lost by Porter Hartsfield as the result of Porter Rose's being assigned to a certain car on December 24, 1953, which assignment allegedly should have been given to Porter Hartsfield under Rules 43 and 46 of the Agreement.

The facts are not disputed. Porter Rose's regular assignment was blanked on the morning of December 24, 1953, at which time he was at his home

terminal with layover expiring at 6:30 P. M. that day. He was placed on the extra list and during the 1:30 P. M. to 3:30 P. M. signout period was awarded an extra assignment, reporting at 6:30 P. M., also on the 24th.

On the 24th, during the signout period, Porter Hartsfield, who had arrived at the home terminal on December 21, two days prior to Porter Rose, was eligible and ready for an assignment at the time the extra assignment was awarded to Porter Rose.

The facts, arguments and issues are the same in this case as in Award No. 7142, decided this date. For the reasons set forth in that award, the claim should be sustained in conformity therewith.

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

The Agreement was violated to the extent indicated in Opinion.

AWARD

Claim sustained in conformity with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) Ivan A. Tummon
Secretary

Dated at Chicago, Illinois this 21st day of October, 1955.