

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of C. W. Gray, who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of the District of Baltimore, Maryland.

Because The Pullman Company did, under date of August 11, 1954, deny the claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of C. W. Gray in which claim it was contended that The Pullman Company violated the rules of the Agreement governing the wages and working conditions of the group of employees of which Porter Gray is a part, and in which claim the Organization contended that Porter Gray should have been given an assignment that was given to another employe of the Baltimore District due to the fact that a regular assigned employe was put on the extra list on the day in question in a position contrary to the provisions of the above-mentioned Agreement.

And further, for the claim to be sustained as contended for by the Organization, and for Porter Gray to be compensated for the wages he lost by reason of the Agreement violation.

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 provided for under the Railway Labor Act; and in such capacity it is duly authorized to represent C. W. Gray, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Baltimore, Maryland District.

Under date of July 27, 1954 a claim was filed for and in behalf of C. W. Gray, who is employed in the Baltimore District, and operates as an extra employe.

Your Petitioner further sets forth that Mr. Gray, as an extra porter, was the first man on the extra list in the Baltimore District on March 1, 1954, and in accordance with the regulations of the Agreement particularly Rule 43, Paragraph B, he should have been given the first assignment on that particular date. However, due to the fact that J. R. Merritt, a porter regularly assigned to Line 6106 between Baltimore and Detroit, was given this assignment because Line 6106 between Baltimore and Detroit was discontinued or blanked on that particular day, Porter Merritt was put at the top of the extra

ments are temporarily discontinued by reason of "acts of God," such as hurricanes, floods, etc., shall be placed upon the extra list after expiration of layover and "may be assigned as extra employees in accordance with Rule 46 to service which will make them available for their regular assignment when resumed." (Emphasis ours). It will be noted that Rule 43 (a) is similar to Rule 43 (b), the controlling rule in this dispute, in that both rules govern the activities of regular employees whose regular runs are temporarily discontinued. Rule 43 (a), however, governs employees whose runs are discontinued by reasons of "acts of God," whereas Rule 43 (b) governs employees whose runs are discontinued by reason of other than "acts of God." The rules differ in other important aspects; for example, under Rule 43 (a) the Company is not obligated to keep "whole" the earnings of the regular employee whose regular run is interrupted, whereas under Rule 43 (b) this obligation is imposed upon the Company. The most significant difference between the rules, however, lies in the fact that Rule 43 (a) makes express reference to Rule 46 (a reference missing in Rule 43 (b)), while Rule 43 (b) makes express reference to "any assignment or assignments" (a phrase absent from Rule 43 (a)). The Company submits that a comparison of these rules establishes conclusively that the negotiators intended a different pattern for employees under Rule 43 (a) than for employees under Rule 43 (b). Clearly, it was intended that regular employees under Rule 43 (a) be assigned "first-in, first-out" as outlined in Rule 46. On the other hand, it was intended that regular employees under Rule 43 (b) be subject to "any assignment or assignments." In this dispute, by arguing that Porter Merritt was subject to the "first-in, first-out" procedure, the Organization ignores the distinction between Rule 43 (a) and Rule 43 (b) and is improperly attempting to impose upon a Rule 43 (b) employee the procedure of Rule 46 as adopted in Rule 43 (a) and in so doing, the Organization is predicated its claim upon an erroneous interpretation of the rules.

CONCLUSION

In this ex parte statement The Pullman Company has shown that Rule 43 (b) is the controlling rule governing the facts of this case and that the Company fully complied with said rule. Further, the Company has shown that Rule 46 of the Agreement, relied upon by the Organization, was not relevant to this case and that neither it nor any other rule of the working Agreement was in any manner violated by the Company. The Company has shown also that Porter Merritt was fully entitled to the assignments he received on March 1 and March 2, 1954, and that Porter Gray, the claimant, was not entitled to the assignments. The Organization's claim in behalf of Porter Gray is predicated upon an improper and erroneous interpretation of the working Agreement. As such, it 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: On March 1, 1954, Carrier was notified by the Baltimore and Ohio Railroad that operation of Line 6106, a Pullman run between Baltimore and Detroit, would be temporarily suspended for one round trip, beginning that afternoon. Porter J. R. Merritt of the Baltimore District, who was regularly assigned to this run and was scheduled to report for duty at 2:45 P. M. on that day, at which time his layover was to expire, was advised of this temporary suspension.

During the signout period between 12:00 noon and 2:00 P. M. on March 1, Porter Merritt was assigned to the Extra List and given a station duty assignment for which he reported at 12:30 P. M. and from which he was released at 2:30 P. M. the same day. This assignment was given prior to the expiration of Porter Merritt's layover period and has given rise to the instant grievance.

Porter C. W. Gray, who was at the head of the extra list on March 1, 1954, claims that the assignment was improperly given to Porter Merritt. The Brotherhood has, therefore, claimed that the Carrier violated Rule 43 (b) and must compensate Porter Gray for the loss he sustained. The pertinent language is as follows:

"(b) Where a regular assignment has been temporarily discontinued or interrupted due to causes other than 'acts of God', the employees affected, when at or returned to their home station, shall be placed on the extra list after expiration of layover and as extra employees shall be subject to any assignment or assignments which will make them available for their next regular trip, if possible, or otherwise within a reasonable time. They shall not receive less credit than they would have earned on their regular runs had such runs not been temporarily discontinued, provided they do not refuse an assignment."

The controlling issue involved in this case, insofar as the station duty assignment is concerned, is the same as that which was presented by the same parties, under the same agreement and rules and decided by this Board in Award 7142. Accordingly, the Carrier violated the Agreement in the instant case when it placed Porter Merritt's name on the extra list before the expiration of his layover at 2:45 P.M. on March 1, 1954, and to that extent the claim must be sustained.

With respect to the road service assignment, which was given to Porter Merritt during the signout period on March 2, 1954, the situation was different. Merritt's layover period had expired the previous day, and he was, under the provisions of Rule 43 (b) "subject to any assignment or assignments" which would make him available for his next regular trip, if possible.

The Brotherhood contends that the "first-in, first-out" provisions of Rule 46 should be applied and that Claimant Gray, being first on the extra list was entitled to the New York run on Line 6619 which was given to Porter Merritt on March 2. With this we cannot agree. Rule 46 is by specific reference made a part of Rule 43 (a) where runs have been cancelled due to hurricanes, floods, earthquakes or other "acts of God", and where the Carrier is not required to make the employee whole. But Rule 43 (b) omits any reference to Rule 46 and provides that the Carrier must make the employees whole, "provided they do not refuse an assignment". That is, where regular assignments have been temporarily discontinued "due to causes other than 'acts of God'", the parties have provided a distinctly different rule.

Rule 43 (b), which is controlling in the instant case, protects the employees by providing that they "shall not receive less credit than they would have earned on their regular runs had such runs not been temporarily discontinued"; but at the same time it permits Management to utilize the services of such employees with more freedom. As extra employees these "shall be subject to any assignment or assignments which will make them available for their next regular trip, if possible, * * *." There is no "first-in, first-out" restriction for employees covered by Rule 43 (b). And admittedly this claim arises under this rule. Accordingly, the Carrier did not violate the Agreement in the instant case when it gave Porter Merritt the road service assignment on March 2, 1954, and to that extent the claim must be denied.

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 violated to the extent indicated in the Opinion.

AWARD: Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May, 1956.