

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 A. D. Cook, who is now, and for some time has been, employed by The Pullman Company as a porter operating out of the Albany Agency.

Because The Pullman Company did, under date of May 13, 1954, through its Agent C. H. Armstrong, deny the claim filed for and in behalf of Porter A. D. Cook 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 employes of which Porter Cook is a part, and in which claim the Organization contended that Porter Cook should have been given an assignment that was given to another employe in the Albany Agency because this employe, who was a regularly assigned employe, had been put on the extra list in a position contrary to the regulations in the above-mentioned Agreement.

And further for the claim, which has been denied by The Pullman Company, be sustained, and for Porter A. D. Cook to be compensated for the amount of money he lost as a result of said violation of the Agreement.

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; and in such capacity it is duly authorized to represent A. D. Cook, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Agency of Albany, New York.

Your Petitioner further sets forth that as of November 26, 1953 Porter Cook was the top man on the extra list in the Albany Agency and was entitled to the first assignment on that particular day. However, on that same day, November 26, 1953, Line 1126 which operated between Boston and Albany was cancelled on the night of the 26th due to the fact that there was a holiday lull of business. Porter Osmond Cole, one of the regular men operating in Line 1126, was due to go out in that line on the above-mentioned date, but because the line did not go out he was placed at the top of the extra list, and was given the first assignment on that particular day, which was a trip from Albany, New York by way of Lake Placid to New York City. Porter Cook, the Petitioner sets forth, was the first extra man entitled to have been given the first assignment, but because the Company had placed Porter Cole at

At this point, The Pullman Company wishes to call attention to the provisions of Rule 43(a) of the Agreement, which rule, set forth in full text in Exhibit I, contains explicit reference to Rule 46. Like Rule 43(b), Rule 43(a) is concerned with the disposition made of regular employees whose regular runs are temporarily interrupted; however, Rule 43(a) is concerned with interruptions caused by "acts of God," such as storms, hurricanes, etc., whereas Rule 43(b) is concerned with interruptions caused by other than "acts of God". The rules differ also in that an employee under Rule 43(a) is not guaranteed regular wages during the period his assignment is interrupted, whereas an employee under Rule 43(b) is kept "whole". The significant difference, however, lies in the fact that Rule 43(a) makes express reference to Rule 46, a reference omitted from Rule 43(b). The Company submits that a comparison of the 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 Rule 43 (a) employees be assigned "first-in, first-out" as outlined in Rule 46. On the other hand, it was intended that Rule 43 (b) employees be subject to "any assignment or assignments." In this dispute, by arguing that regular Porter Cole was subject to the "first-in, first-out" procedure, the Organization improperly ignores the distinction between Rule 43 (a) and Rule 43 (b) and is improperly attempting to impose upon a Rule 43 (b) regular employee the procedure of Rule 46 referred to and adopted in Rule 43 (a). In so doing, the Organization is predicated its claim upon an erroneous interpretation of the working Rules.

CONCLUSION

The Pullman Company has shown that Rule 43 (b) of the working Agreement is the controlling rule in this dispute and that the Company fully complied with said rule when it gave Porter Cole the assignment to New York on November 28, 1953. Also, the Company has shown that the Organization's position in this dispute is based upon an erroneous interpretation of the Agreement and is, thus, without merit. Inasmuch as Porter Cole was properly assigned to New York on November 28, 1953, the claimant, Porter Cook, was not entitled to that assignment. The working Agreement was in no manner violated. The Organization's claim in behalf of Porter Cook 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 November 25, 1953, Carrier was notified by the New York Central Railroad that operation of Line 1126, a Pullman run between Albany and Boston, would be temporarily suspended for one round trip commencing November 26, 1953, **because of the holiday lull in business.** Porter O. Cole, who was regularly assigned to Line 1126 and who was scheduled to report for duty at 7 P. M., November 26, was advised of this fact. In accordance with Rule 43 (b) Cole's name was placed on the list of extra porters and he became eligible, upon the expiration of his layover, for assignments which would make him available for his next regular trip in Line 1126, December 1, 1953, if possible.

No assignments were available to him on either November 26, or November 27, 1953. However, Porter Cole was given a road service assignment to New York, for which he reported at 10:50 P. M., November 28. From this he returned to his regular assignment December 1. The record shows that Porter Cole received full pay for the period in question.

Under date of April 26, 1954, Carrier's Albany agent received a letter from Porter Cole, as President of the Albany Division, Brotherhood of Sleeping Car Porters, in which Mr. Cole alleged a violation of Rule 43 (b) of the parties' Agreement. He contended that he had been improperly assigned

to the New York run on November 28, and that Porter A. D. Cook, who held the No. 1 position as extra man, should have been given the assignment. This claim on behalf of Porter Cook is the one now before us.

Carrier's Albany agent replied to Mr. Cole's letter of April 26, and called attention to the fact that under Rule 43 (b) Cole was properly assigned, since upon the expiration of his layover he became subject to "any assignment" which would make him available for his regular run when it was resumed on December 1, 1953.

It is important to bear in mind that the parties' Agreement has two separate and distinct provisions regarding the use of regular employees who are temporarily assigned to the extra list when their regular runs have been cancelled. The first of these is found in Rule 43 (a). This applies when the service has been interrupted due to disaster or "acts of God". In this situation, the Carrier is not obligated to pay the employees for time lost, and they are put on the extra list on a first-in, first-out basis. The second provision applies when the service has been temporarily interrupted by other than acts of God or nature. In this situation the Carrier is obligated to pay the regular employees for time lost but in return the employees must accept any assignments given them by the Carrier which will bring them back in time for their next regular runs, if possible. If the employees decline such assignments there is no requirement to make them whole. Rule 43 (b) is clear on this point.

Rule 43 (a), by reference, incorporates the first-in, first-out rule set forth in Rule 46 (a). But this principle is not carried forward in Rule 43 (b), where the Carrier is obligated to pay the employees for their lost time.

In this case the Carrier made Porter Cole whole on his regular assignment in compensating him for the time spent on the extra run to New York on November 28. The right to give him that assignment was clearly reserved in Rule 43 (b) when the Carrier made itself liable for pay for Porter Cole's lost time.

Since this was not an interruption of service caused by flood, cyclone, hurricane, or acts of God, but one due to other causes, the first-in, first-out provision did not apply and Porter Cole's claim on behalf of Porter Cook is without merit under the parties' Agreement. See Award 7326.

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. Ivan Tummon
Executive Secretary

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