

Award No. 9687
Docket No. PM-9648

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of E. Mitchell, J. O. Fields, E. L. Herbert, N. Miller, J. Herbert, R. J. Parker, D. Scott, Dave Johnson, J. Kinsey, G. T. Williams, E. P. Russell, J. O. Fields, E. J. Monier, E. Artis, E. R. Moses, E. Ballard, H. T. Odom, A. J. George, J. B. Cross, N. Miller, W. Wimberley, E. Lacy, R. H. Young, P. R. Fluence, M. Darensburg, J. K. Payne, T. J. Jenkins, G. Love, H. E. McGhee, C. W. Wilson, J. Moore, B. Webster, L. Verrett, E. L. Bishop, B. Webster, L. Rainey, J. Moore, L. L. Hawkins, and J. J. Washington, who are now, and for some years past have been, employed by The Pullman Company as porters operating out of the District of San Francisco, California.

Because The Pullman Company did finally, through Appeals Officer W. W. Dodds of The Pullman Company, deny the claims filed for and in behalf of the above-mentioned porters through Superintendent H. C. Lincoln of the San Francisco District, in which claims the Organization maintained that the Agreement between The Pullman Company and its Porters, Attendants, Maids and Bus Boys, represented by the Brotherhood of Sleeping Car Porters, was violated in connection with the operation of the above-mentioned employes out of the San Francisco District in that it deprived them of certain work to which they were entitled under the rules of the above-mentioned Agreement, and particularly under Rule 43 (b).

And further, for the above-mentioned porters, employes of The Pullman Company, to be paid such sums of money as was lost by them in the wages that they would have earned had not the Agreement been violated as set forth in said claims which were filed for and in behalf of the above-mentioned porters through Superintendent H. C. Lincoln of the San Francisco District.

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.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent S. Mitchell, J. O. Fields, E. L. Herbert, et al, for and in

based upon an erroneous interpretation of Award 7142, which Award, when analyzed, supports the Company's position.

The Organization's claim is without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The only issue that is involved herein as the case was processed by the Organization on the property and before this Board is whether the particular individuals (extra Porters) designated by the Organization as claimants were proper claimants entitled to compensation adjustments by virtue of the Carrier's action in prematurely placing regularly assigned Porters on the extra list. The amount of adjustment will often vary depending upon which extra Porter is to receive it.

The Carrier is correct in its contention that the proper claimant for the Carrier's admitted violation of Rule 43 (b) is the extra Porter who would have received the specific assignment had it not been improperly given to the regular Porter on each of the trips involved in the claim—that is, the proper claimant would be the extra Porter who should have received the specific assignment given the regular Porter.

After the claim was filed the Carrier's investigation revealed that seven of the individuals who had been named as claimants had been properly designated as such, and the Carrier thereupon made adjustments to them; accordingly, the claims of those named claimants for whom adjustments have been made should now be dismissed by the Board.

The claims of the thirty-nine other named individuals must also be dismissed since in no instance was the named individual the extra Porter who should have received the assignment that was improperly given to a regular Porter. The Carrier's view that the proper claimant would be the extra Porter who should have received the specific assignment given to the regular Porter is abundantly supported by the "first-in, first-out" provision of Rule 46 of the Parties' Agreement and by the basic principle underlying Third Division Award 3831 and Award 55 of Special Board of Adjustment No. 155. It may also be noted that in filing a claim on behalf of nineteen extra Porters in the Atlanta Division, the Organization's representative named as individual claimants the extra Porters who would have received the specific assignments improperly given to regular Porters.

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 claim must be dismissed for reasons stated in Opinion.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of December, 1960.