Award No. 9840
Docket No. PM-9739

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "* * * for and in behalf of S. Williams, N. Miller, T. Shaw, D. Scott, W. H. Byrd, P. W. Jackson, C. Bryant, N. Turley, H. Meyers, A. A. Williams, E. Artis, T. J. Jenkins, B. Webster, P. Allums, J. Garibaldi, S. Williams, G. W. Gilliard, J. C. McGruder, R. H. Young, P. W. Jackson, G. McFarland, M. Darensbourg, W. Henry, B. Webster, E. L. Meshack, L. Verret, C. M. Butler, J. Kincey, J. V. Zeno, C. U. Long, W. Pruitt, W. Mitchell, H. Biser, G. W. Gilliard, W. C. Allen, A. W. Massey, L. W. Tate, E. L. Meshack, E. Artis, B. T. Thompson, H. M. Simmons, W. Mitchell, L. L. Hawkins, R. R. Stroud, J. K. Payne, D. B. Witherspoon, C. Cochran, B. D. McGavock, and J. O. Fields, 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, particularly 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 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 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 provided for under the Railway Labor Act; and in such capacity it is duly authorized to represent S. Williams, N. Miller, T.

OPINION OF BOARD: In this case, as we held in Award 9687, Elkouri:

> "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 Carrier's action in prematurely placing regularly assigned Porters on the extra list. * * *"

Moreover, the Organization emphasized that issue by a statement and also the filing of Exhibit E before the Board. In so doing it asserted that said exhibit had been filed in Docket PM-9648 (later covered by Award 9687) for a group of employes "who have filed claims identical with those filed in the instant case" and that the "principle" involved in all these claims is "identical".

As the record shows that the parties agree that the claims (except in name and amounts), principles and arguments are identical with those covered by Award 9687, this Board should follow its action at that time and dismiss the same.

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 Employes involved in this dispute are respectively Carrier and Employes 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 the Opinion.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February, 1961.

LABOR MEMBERS DISSENT TO AWARD 9840 — DOCKET PM-9739.

The majority, consisting of the Referee and the Carrier Members, erroneously hold:

In this case, as we held in Award 9687, Elkouri:

> "The only issue 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 Organi-

zation as Claimants were proper Claimants entitled to compensation adjustments by virtue of Carrier's action in prematurely placing regularly assigned Porters on the extra list. * * *"

"As the record shows that the parties agree that the claims (except in name and amounts) principle and arguments are identical with those covered by Award 9687, this Board should follow its action at that time and dismiss the same."

Award 9840 is clearly in error. Award 9687, Elkouri, held:

"* * * 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** * * *." (Emphasis supplied).

As pointed out to the Referee in panel argument in the instant case, the claim was:

"* * * 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 wages that they **would have earned** had not the Agreement been violated. * * *"

Rule 43 (b) was the rule violated, and the Carrier admitted the violation; and as further pointed out, Rule 43 (b) is applicable **only** to a **regularly** assigned employe when his regular assignment is temporarily discontinued. He is then placed on the Extra Board **after expiration of layover.** In the instant case the regular Porter was placed on the Extra Board **before expiration of layover,** in violation of Rule 43 (b), thereby resulting in one of the Extra Porters being deprived of work to which he was entitled under Rule 46, this being a procedural rule governing the assignment of Extra Porters. It is not a pay rule that provides how the employe will be paid when used or not used thereunder.

The principles erroneously relied upon in Award 9687 are the principles established in Award 3831 of Special Board of Adjustment 155, and are clearly distinguishable from the issue confronting this Board in Award 9687. Award 3831 involved The Pullman Company and its Conductors. The Organization alleged violation of Rule 38, the rule governing assignment of Extra Conductors. The Conductors' Agreement contains a "Memorandum of Understanding Concerning Compensation for Wage Loss." Award 3831 established the principle that the Extra Conductor having the least number of credited hours is the Conductor **entitled** to be compensated under the provisions of the Memorandum. Award 55, Special Board of Adjustment No. 155, involved a dispute between The Order of Railway Conductors and Great Northern Railway, the Organization's claim being denied because the rules in effect and interpretation on the Great Northern Railway **only** the first man out or first crew out is entitled to **denied service,** as outlined in the **Denied Service Rule** of the parties' Agreement.

The Porters' Agreement contains **no rule** providing whom shall receive compensation when there is a violation of a rule or rules. Therefore, this Board's decision in Award 9687 based upon —

1. Rule 46 of the Porters' Agreement, which deals **entirely** with procedure in the assignment of Extra Porters, not wage loss,

and

2. Third Division Award 3831 and Award 55, Special Board of Adjustment No. 155, both of which involved Agreements which specifically name the Claimant,

make it abundantly clear that the Agreements applicable to other crafts and classes were **not** applicable to Porters and should not have been given any consideration. Here we find an innovation in the handling of disputes under a collective bargaining Agreement, the Board holding, in effect, that the provision of an Agreement negotiated and executed between the Carrier and representatives of one class of employes (Conductors) is controlling in the establishment of working conditions of employes in another separate and distinct class or craft of employes (Porters). The fallacy of such holding was conclusively shown in Award 4635 of this Division, wherein we held:

> "Can the American Train Dispatchers Association be bound, in its dealings with this Carrier, by an Agreement made by the Carrier with the Order of Railroad Telegraphers? Can the Telegraphers extend, expand, contract or otherwise modify the Scope Rule or any other rule of the Dispatchers' Agreement? We think not. However free the Telegraphers may be to make such concessions in their own Agreement as they wish it is a well understood rule of law, that they cannot bind others not parties to the Agreement. These Agreements are not interchangeable; each presumably is made for its own craft. Award 2371."

Similarly, the employes covered by the Agreement between The Pullman Company and the Brotherhood of Sleeping Car Porters cannot be bound in its dealings with this Carrier by any rule in the Conductors' Agreement. The same conclusion applies with respect to the Agreement between the Great Northern Railway and its Conductors.

Third Division Award 7142 was the pilot Award, and there it was held that under the provision of Rule 43 (b) a regularly assigned Porter, when his regular assignment is temporarily discontinued, may be used in extra service and placed on the Extra Board **after expiration of his layover.** That was the **only** issue. The question of "wrong Claimant" or "proper Claimant" was not at issue.

The collective bargaining Agreement is between the petitioning Organization and the Respondent Carrier. For that reason the Organization and the Carrier are the contracting parties, and the Organization is the proper party to assert a claim for a violation of the Agreement on behalf of any employe it represents. In such cases the Board has repeatedly held that it is of no concern of the Carrier whom the Organization names as Claimant. See Awards 4022, 5266, 6324.

The following principles have been established by the Board as to its authority to allow claims in the nature of penalties for violations of Agreements:

1. Experience has shown that if rules are to be effective there must be adequate penalties for violation. The sanctity of the Agreements must be maintained.

2. The violation of the Agreement is the important thing and it is of no concern to the Carrier whom the Organization names as Claimant, as the Carrier would only be required to pay once.

3. The penalty rate for work lost because it was given to one not entitled to it, is the rate which the occupant of the position would have received had be performed the work.

These principles are supported by numerous Awards of this Board and need no citation here.

The only issues to be decided here were first, - - - was the Agreement violated? The answer to that question is answered in the affirmative by the Carrier. The second question is, - - - did the Claimant lose money because of this violation? The answer is again affirmative because the Claimant did not receive the assignment to which he was entitled, nor has he been compensated for the work lost.

For the foregoing reasons Award 9840 is patently wrong and in error; therefore I dissent.

H. C. Kohler
Labor Member
National Railroad Adjustment Board
Third Division

CARRIER MEMBERS' REPLY TO LABOR MEMBER'S DISSENTS TO AWARDS 9840, 9841, 9842 and 9843

These Awards, along with Award 9687 which they followed in dismissing the instant claims, all involving the same parties, agreement, rules and issue, specifically provide, in clear and unambiguous language, and notwithstanding that the named claimants might have lost or actually did lose money because of Carrier's violation of a rule, that the only proper claimant, if any, under the rules and practices in effect on this property, is the one porter directly affected by the violation.

/s/ **W. H. Castle**

/s/ **R. A. Carroll**

/s/ **P. C. Carter**

/s/ **D. S. Dugan**

/s/ **J. F. Mullen**