

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 L. H. Owens, J. Meyers, L. W. Tate, E. Artis, B. D. McGavock, L. H. Owens, B. D. McGavock, W. E. McGowan, C. Williams, G. McFarland, G. C. Bradley, D. Cummings, J. N. Robertson, R. J. Parker, J. Moore, J. B. Jackson, J. R. Worsham, Wesley Johnson, J. T. Vance, J. T. Vance, L. Johnson, W. Pruitt, J. Moore, J. C. McGruder, C. M. Butler, E. Mitchell, A. Green, M. Darensburg, I. S. Williams, L. Verrett, R. R. Stroud, J. K. Payne, J. W. Robertson, L. Johnson, C. W. Wilson, L. Rainey, G. C. Bradley, S. Washington, A. A. Crandall, E. Artis, R. R. Stroud, S. Washington, R. H. Taylor, R. J. Parker, J. C. McGruder, G. Love, E. L. Bishop, A. A. Crandall, E. L. Herbert, E. L. Meshack, B. T. Thompson, C. Williams, D. Scott, P. W. Jackson, A. Taylor, P. R. Fluence, L. W. Tate, C. Griffin, M. Cooper, C. Griffin, A. Green, A. D. DeBose, H. T. Odom, J. B. Jackson, O. Lewis, C. W. Wilson, R. D. Vinson, R. R. Stroud, S. Washington, C. Jones, G. W. Gilliard, R. J. Parker, H. Meyers, G. C. Bradley, D. Johnson, R. Stanley, E. W. Scott, J. J. Washington, C. Purvis, C. Williams, A. J. George, E. M. Harris, E. W. Merritt, W. E. Mustapha, T. H. Kane, E. W. Merritt, J. A. Harrison, E. J. Monier, G. W. Gilliard, G. Love, C. Cochran, C. M. Butler, Leroy Jones, W. Pruitt, P. W. Jackson, H. Biser, T. R. Kaywood, C. W. Wilson, E. M. Harris, N. Miller, J. Moore, E. R. Moses, B. D. McGavock, E. Artis, A. D. Mapp, M. Darensbourg, E. Lacy, O. Livingston, 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 employees 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, employees 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 Lincoln of the San Francisco District.

EMPLOYEES' 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.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent L. H. Owens, J. Meyers, L. W. Tate, et al, in whose behalf these claims were filed with your Honorable Board as set forth in Petitioner's STATEMENT OF CLAIM, who are now, and for some time past have been, employed by The Pullman Company as porters operating out of the District of San Francisco, California.

Your Petitioner further sets forth that The Pullman Company has, in the San Francisco District as well as in other districts, violated certain rules of the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys in the United States of America and Canada, represented by the Brotherhood of Sleeping Car Porters. The particular rule in the Agreement which the Organization maintains has been violated is Rule 43 (b).

Your Petitioner further sets forth that under dates of March 28, 1956, June 11, 1956 and June 13, 1956, the Petitioner did, through Mr. C. L. Dellums, its 3rd International Vice President, file claims for and in behalf of the above-mentioned employees, through Superintendent H. C. Lincoln of the San Francisco District.

For instance, in the claim of L. H. Owens, the Organization maintained that he was entitled to pay for 12 hours and 45 minutes because J. Q. Wilson whose line, Line 3468, was blanked or discontinued due to causes other than "acts of God" on May 14, 1954, was given the assignment in Line 3462 that same afternoon, returned May 16th, 10:00 A. M., and accumulated 24 hours and 45 minutes. L. H. Owens wasn't given an assignment on May 14th because J. Q. Wilson was used in violation of the above-mentioned Agreement. This is an example of what has happened in all of these cases, and to repeat them now would simply be repetition and taking up time because they all are based upon the same principle.

Your Petitioner further sets forth that said claims were denied by Mr. Lincoln under dates of October 31, 1956, October 31, 1956 and November 6, 1956. Appeals were taken from the decision of Mr. Lincoln in all of these claims through the regular channels up to and including Mr. W. W. Dodds, Appeals Officer, and last officer designated by the Management to handle matters of this sort, who did, under date of April 3, 1957, deny all the claims filed in this instance for and in behalf of these employees above-mentioned.

Your Petitioner further sets forth that it did, under date of May 29, 1957, file notice with your Honorable Board of its intention to file an ex parte submission for and in behalf of the above-mentioned employees in this case, and that on the same day and date copy of said notice was served on Mr. H. R. Lary, Supervisor, Labor Relations, The Pullman Company.

according to the Board, are not "fixed" and these employees are not entitled to adjustments.

In the case at hand the initial assignment on each of the 109 dates involved is the specific assignment performed by the regular porter. Also, in the case at hand, on each date of violation, the proper claimant is the extra porter who would have received the assignment given the regular porter. The 109 claimants named by the Organization did not lose the assignments performed by the regularly assigned men and are thus not entitled to adjustments.

The Pullman Company also wishes to call the attention of the Board to the fact that a dispute involving the same principle as the instant dispute has recently been adjudicated by National Mediation Board Special Board of Adjustment No. 155, which Board settled certain controversies between the Great Northern Railway Company and the Order of Railway Conductors and Brakemen. This Board was composed of Mr. D. F. McMahon (Chairman and Neutral Member), Mr. C. A. Pearson (Carrier Member) and Mr. L. E. Downing (Organization Member). Of significance is Docket No. 55, in which docket, as in the instant case, a claim was filed in behalf of an employee who did not stand "first-out" on the extra list and who would not have performed the specific assignment given the wrong employee. The Special Board of Adjustment denied the claim on the sole basis that it was not filed in behalf of the proper claimant. The Award of the Special Board of Adjustment in Docket No. 55, dated April 15, 1957, is attached as Exhibit J.

CONCLUSION

In this ex parte submission, The Pullman Company has shown that the Organization initially filed 3 separate letters of claim in behalf of 113 employees as a consequence of the Company's alleged violation of Rule 43 (b) of the working Agreement in the San Francisco District. The Company has shown that it has compensated 3 of the employees named, that it denied one claim on the basis that no violation of Rule 43 (b) occurred, and that it has not compensated the remaining 109 employees on the basis that they were not the proper claimants. Further, the Company has shown that Management's position in this dispute is supported by practice, by Awards of the National Railroad Adjustment Board and by an Award of a Special Board of Adjustment. Finally, the Company has shown that the Organization's position is 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 representatives and made a part of this dispute.

(Exhibits not reproduced.)

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 employees "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 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 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 AWARDS 9841, 9842, 9843
DOCKETS PM-9740, PM-9741, PM-9742**

My dissent to Award 9840, Docket PM-9739, applies equally here and is by reference repeated.

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