

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 E. C. Crawford, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the District of St. Louis, Missouri.

Because The Pullman Company did finally, through Mr. W. W. Dodds, Appeals Officer, and last officer designated by the Management to handle matters of this sort, deny the claim filed by this Organization for and in behalf of E. C. Crawford in which it was contended that on October 8, 1955, The Pullman Company did violate Rule 46 of the Agreement now in effect between The Pullman Company and Porters, Attendants, Maids and Bus Boys employed by The Pullman Company in the United States of America and Canada, when it placed Porter T. H. Turner on an assignment, instead of Porter Crawford, in special service departing St. Louis on said date en route Fort Bragg, North Carolina.

And further, for Porter E. C. Crawford to be paid such sums of money as he has lost in wages that he would have earned had not the Agreement been violated as set forth in said claim.

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.

Your Petitioner further submits that in such capacity it is duly authorized to represent E. C. Crawford, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the St. Louis District.

Your Petitioner further sets forth that under date of April 11, 1956, the Brotherhood of Sleeping Car Porters did, through its Fourth International Vice President T. D. McNeal, file a claim with Superintendent T. C. Birch of St. Louis for and in behalf of Porter Crawford in which it contended that Porter Crawford had been deprived of an assignment that should have been given to him under the rules of the Agreement, and by reason thereof he had lost money, and that Porter Crawford should be paid the amount of

Additionally on the unsound premise that Crawford was "due" the Fort Bragg assignment, the Organization in its initial letter of claim alleged that Crawford was due an adjustment of 33:20 hours, which amount allegedly represented the difference in the amount earned by Crawford and the amount earned by Turner (Exhibit A, p. 4). An examination of Porter Turner's time sheet for the first half October, 1955, shows that he reported for the Fort Bragg trip 4:30 P. M., October 8, and was released at 8:50 A. M., October 12, 1955. For this trip Turner accumulated 51:05 hours. During this same period Crawford accumulated 33:20 hours or 17:45 hours less than Turner. The Company submits that even if Crawford were entitled to the assignment to Fort Bragg, which he was not, the amount claimed by the Organization is clearly excessive.

CONCLUSION

In this ex parte submission the Company has shown that Porter Crawford properly was assigned to station duty on October 7, 1955, and that neither Rule 46 or any other rule of the Agreement required the Company to assign Crawford to a road service assignment in special service departing St. Louis 4:30 P. M., October 8, 1955. Further, the Company has shown that the Organization's contentions in this dispute are unsound and that no compensation is due Crawford. Finally, the Company has shown that Awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim of the Organization is without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Porter E. C. Crawford was an extra porter in the St. Louis District on October 7, 1955. The signout period is from 1:00 P. M. to 3:00 P. M. daily, in which all road assignments having a reporting time from 4:31 P. M. the current day through 4:30 P. M. the following day are made, subject to the provisions of Rule 46.

After the close of the signout period on October 7, 1955, Crawford was No. 20 (Carrier has it No. 19) on the list of extra porters next due for assignment. It was then known by the Company that there would be need for nineteen road service assignments to be made during the signout period commencing at 1:00 P. M., October 8. However, Porter Crawford was called on October 7, at about 3:30 P. M. and told to report at 4:30 P. M. on October 8 for station duty service.

On October 8, sixteen road assignments were listed for which fifteen extra men were available and assigned, one assignment St. Louis to Fort Bragg, North Carolina remaining with reporting time 6:30 P. M. that day, and the Carrier was aware of this before 3:00 P. M., the close of the signout period, and while Crawford was still at home.

Crawford reported at the signout office shortly before 4:30 P. M., October 8 and was informed by the signout clerk that because he had been assigned to station duty service, the extra car to Fort Bragg would be given to Porter T. H. Turner, who was next behind Crawford on the extra list.

Employees contend that Rule 46 was violated by the Company when Crawford was refused the assignment to Fort Bragg, North Carolina and also when Crawford was given the station duty job at a time when it was known on October 7 that it was practically certain he would be needed for road service on October 8.

The Company asserts that Crawford was properly assigned to station duty October 7 and that neither Rule 46 nor any other required the Company to cancel his station duty assignment and give him the St. Louis-Fort Bragg assignment. It supports its position by an interpretation of Rule 46 which we will refer to later.

The provisions of Rule 46 insofar as material are as follows:

“(a) Extra employes when available, except as provided herein, shall be used ‘first-in, first-out’ in accordance with expiration of layover. * * *”

(c) and (e) contain details of handling assignments and the latter provides that they:

“(e) * * * shall be made to the remaining available employes of that group, according to their standing on the extra list, who are registered for that signout day. Thereafter station duty assignments, having been grouped in chronological order, shall be made. Employes excused from these assignments shall immediately revert to the bottom of the extra list, except that an employe excused from station duty shall not lose his position on the extra list.

“An extra employe assigned to station duty shall be given a road service assignment which both arises and has a reporting time during his tour of station duty. Where sufficient extra employes are available, employes shall not be assigned to station duty for the following morning when it is practically certain they will get a road service assignment that day.

“(i) Witness service of less than 6:50 hours, station duty and ‘called and not used’, shall not be considered an assignment under this Rule.”

In construing the agreement it is, of course, elementary that we look to all four corners thereof and give effect to all of its provisions, so as to preserve and not destroy any particular section thereof. Award 6567 (Wyckoff), Award 6723 (Donaldson), Award 8380 (Vokoun).

Much importance should, of course, be attached to section (a) of Rule 46 which at the very outset proclaims that extra employes when available, except as provided herein, shall be used “first-in, first-out”, — and a proper construction will look for any provisions or limitations “herein” indicating to the contrary.

Section (e) does tend to restrict the above where it provides that one assigned to station duty “shall be given a road service assignment which both arises and has a reporting time during his tour of station duty”, because such provision negates the idea of a road assignment under any other circumstances while performing that station duty.

We are particularly concerned however, with the period before Crawford reported for station duty — from 3:00 to 4:30 P. M. on October 8, and the provisions of the Rule which may have a bearing thereon.

We find that Section (e) states that an employe excused from station duty “shall not lose his position on the extra list”. The Company indicates that he didn’t ask to be excused and probably he didn’t in so many words, — but his written statement in the record is that:

“I told Mr. Sohm that since I was the No. 19 man on the list that I felt that the rules of the agreement required the Company to give me this assignment.”

(to Fort Bragg) and Mr. Sohm said that since:

“I was scheduled to do station duty * * * I was not entitled to the assignment.”

Moreover Section (e) also admonishes not to assign extra employes to station duty for the following morning “when it is practically certain they will get a road service assignment that day”.

To the above should also be added the provision of Section (i) that:

“* * * station duty * * * shall not be considered an assignment under this Rule.”

The Company says that the question at issue is “whether or not any rule required Carrier to cancel Claimant’s station duty assignment and assign him to the road service assignment”. That oversimplifies the matter. However, if we grant for the moment that after the extra employe enters on his station duty he can no longer be assigned to road service unless it “both arises and has a reporting time on his tour of duty” (which really does not apply to the factual situation here) we still have that period from 3:00 P. M. to 4:30 P. M. before he reported for duty. In fact he was given his station duty orders at 3:30 P. M. the day before. Section (i) provides it is not an “assignment”, so there is nothing that is sacrosanct about it and it can be cancelled like any other order.

The Company points to an interpretation in May, 1954 wherein it said, in effect, that Section (i) meant that station duty should not be considered as an assignment “for the purpose of changing the employe’s position on the extra board”. But these quoted words are not an interpretation, they are a substitution and restriction. The provision is so clear that it needs no interpretation or explanation,

“* * * station duty * * * shall not be considered an assignment **under this Rule.**” (Emphasis added.)

We reject the interpretation of the Company — which was never agreed to by the Employes — as too restrictive in failing to give consideration to the words “under this Rule”. See Award 7142 (Cluster) regarding similar interpretation by the Company of Rule 43.

The Company misinterpreted and misapplied Rule 46; that Crawford’s assignment to station duty on October 7, 1955 left too little margin for safety; that by 3:00 P. M. on the 8th when the Company knew Crawford’s

"turn" had arrived, it should have retrieved the situation and cancelled the orders and assigned him to the Fort Bragg trip and thus have carried out the intention of the Rule that station duty is not an "assignment" and that those who are "first-in" shall really be "first-out" in accordance with the mandate of Rule 46 (a).

The Agreement was violated and claim should be sustained but only in the amount of 17:45 hours.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Rule 46 was violated in that it was misinterpreted and misapplied and claim should be sustained in accordance with this Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

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.