

Award No. 10382

Docket No. PM-10732

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILROAD COMPANY**

STATEMENT OF CLAIM: * * * for and in in behalf of William Webb, who is now, and for some years past has been, employed by the Soo Line Railroad as a sleeping car porter operating out of Minneapolis, Minnesota.

Because the Soo Line Railroad did under date of April 28, 1958, through Superintendent J. Christensen, and finally under date of May 8, 1958, through W. G. Anderson, Manager Personnel and Safety, deny the claim filed by this Organization for and in behalf of William Webb and other porters employed by the Soo Line Railroad, in which it was contended that Porter Webb should be paid for 37 hours and 30 minutes for a trip he should have been allowed to make in his regular assignment on Trains 14 and 15, Minneapolis to Portal, South Dakota, March 15-17, 1958.

And further, for Porter Webb to be paid for the above-mentioned hours as contended for by the Organization in the original claim.

EMPLOYES' STATEMENT OF FACTS: Your Petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is duly authorized to represent all employees of the Soo Line Railroad classified as sleeping car porters.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent William Webb, who is now, and for some years past has been, employed by the Soo Line Railroad as a sleeping car porter operating out of Minneapolis, Minnesota.

Your Petitioner further sets forth that under date of April 23, 1958, the Organization filed a claim for and in behalf of William Webb as it is provided for under the rules of the Agreement, in which it was contended that Porter Webb should have been paid for 37½ hours for a trip he should have been allowed to make in his regular assignment on Trains 14 and 15 between Minneapolis and Portal, South Dakota. It is the contention of the Organization that Porter Webb was assigned to this job as a regular assignment, and the regular assignment called for six round trips to be made per month. The Organization further contended that one of the trips that Porter Webb was supposed to make he was not allowed to make because the Company arbitrarily took him off the run on March 15, 1958.

spectively, as such basis produced a greater amount than the established monthly wage. This rule then was not violated either.

Rule 12 merely states that an employe shall be paid on an overtime basis for hours in excess of the basic month. The basic month is 205 hours and Webb was paid overtime for 6 hours and 35 minutes and Bailey was paid overtime for 13 hours and 30 minutes. This rule then was fully complied with.

In Brotherhood of sleeping Car Porters Vice President M. P. Webster's letter of April 3, 1958, to Superintendent of Dining and Sleeping Cars J. Christensen, he cited the 3 rules listed above and then went on to say:

"It is the Organization's contention, under the above-mentioned rules, that it is left entirely to the Company to make these assignments in such ways as it sees fit as long as it does not violate the Agreement."

To this the Carrier agrees and respectfully submits that this is just what occurred. Carrier in proper exercise of its right to regulate assignments, did so and in the process did not violate any rule of the agreement.

Not only are the employees' claims unsupported by the rules, but their arguments that the Carriers must work the men overtime run contrary to the spirit and intent of the overtime rules. Penalty rate payments have always been argued for by labor not as a right of the employees whereby they might increase their earnings but as a deterrent against employers requiring men to work more than their proscribed hours. To follow the course advocated by the organization would also deprive extra employes of work opportunities which they have traditionally enjoyed on this property.

In summary, Carrier contends that the manner in which claimants were relieved is not violative of their rights under the applicable agreement, the practice is one of long standing and without objection by the employes, the claimants were allowed to work in excess of the guaranteed basic month of 205 hours, they were paid their established monthly rate and in addition received overtime payments for service in excess of 205 hours.

In conclusion, Carrier contends that the claims are not supported by the rules and are entirely without merit. Carrier therefore respectfully requests that they be denied.

All data submitted in support of the Carrier's position has been submitted to the employees' representatives and made a part of the particular question in dispute.

OPINION OF BOARD: The claimant is a sleeping car porter assigned to trains running between Minneapolis, Minnesota and Portal, South Dakota. Porter Webb's regular assignment consists of six trips in a 30 day month. During the month of March, 1958 it became apparent that if the claimant continued to work without relief he would accumulate substantial overtime. In order to cut down on the payment of overtime claimant was relieved for one round trip and an extra employe used in his place.

The organization asserts that inasmuch as claimant is assigned to and is working a regular monthly assignment he is entitled to work every trip of such assignment even if overtime pay is involved.

In Award No. 621 this Board held:

"In the view taken by the Board the organization's claim is not dependable upon whether the time involved may be classified as held for service under Rule 9. The Board disagrees with the carrier's contention that it is at liberty to blank any part of a regular assignment at any time without bulletining and pay only for the remainder. The provision for proportionate payment of less than a round trip is obviously intended to cover failure on the part of the conductor to perform. To subscribe to the carrier's contention would be entirely destructive of the whole theory of the bulletin rules. They contemplate the advertisement of regular assignments. When such an assignment is bid for by a conductor it is conceivable that he may be choosing between it and another. If the carrier could without re-bulletining, from day to day, from circumstances or whim, chop up the assignment so that its actual time and earnings are quite indefinite, the bulletin rules would mean nothing. There is an implied guarantee of the work advertised, the men being ready and willing to perform, until such time as the assignment may be annulled by re-bulletining."

Under this holding of the Board the Claimant would be entitled to pay for the regularly scheduled trips for the month involved. However, in the instant case on this particular railroad it has been the practice since 1938, some twenty-four years, to permit the Carrier to hold out a porter from a regularly scheduled trip to prevent overtime. As this Board held in Award No. 8538:

"When a collective bargaining agreement is consummated and existing practices are not abrogated or changed by its terms, these existing practices are just as valid and enforceable as if authorized by the agreement itself, and particularly where as here an existing practice is sought to be changed.

See also Award No. 5747 and many other decisions of this Board for the same holdings.

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 Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1962.