

Award No. 11236

Docket No. PM-12698

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: For and in behalf of Monroe S. White, who is now, and for several years past has been, employed by Chicago, Rock Island and Pacific Railroad Company as a sleeping car porter operating out of Chicago, Illinois.

Because the Chicago, Rock Island and Pacific Railroad Company did, under date of January 12, 1961, through Mr. Bonesteel, General Superintendent, Dining and Sleeping Car Department, and finally through Mr. G. E. Mallery, Vice President-Personnel and last officer designated by Management to handle cases of this sort, deny the claim filed for and in behalf of Mr. Monroe S. White, in which claim the Organization contended that Management had violated the Agreement between the Chicago, Rock Island and Pacific Railroad Company and its sleeping car porters, represented by the Brotherhood of Sleeping Car Porters, then and now in force and effect, in that Mr. White was deprived of certain sleeping car work, which work is specifically set forth in said claim and which Mr. White was entitled to perform and should have been paid for under the rules of the above-mentioned Agreement.

And further, for the above-mentioned claim to be allowed as contended for by the Organization in the original letter of claim, and for Mr. White to be paid the sum of money lost by him in wages because of his having been deprived of the right to perform the above-mentioned sleeping car work in accordance with the rules of the above-mentioned Agreement.

EMPLOYEES' STATEMENT OF FACTS: Your Petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is duly authorized to represent all employees of the Chicago, Rock Island and Pacific Railroad Company classified as sleeping car Porters.

Your Petitioner further sets forth that in such capacity, it is duly authorized to represent Monroe S. White, who is now, and for several years past has been, employed by the Chicago, Rock Island and Pacific Railroad Company as a sleeping car porter.

Under date of January 12, 1961, the Brotherhood of Sleeping Car Porters filed a claim with the Chicago, Rock Island and Pacific Railroad Company,

(c) When there is service requiring two or more employes with the same reporting time, the senior employe shall be given the assignment with the farthest destination."

was not violated in this instance.

There is no evidence that Mr. Shepherd's attendance at the funeral required him to relinquish his relative position on the porters' extra board. Had his services been called for and had he not responded to the call, then the porter standing behind him on the Board would have been called and used.

This is not the case, however. Not having been called for duty during the period, Shepherd retained his standing ahead of White on the extra board and was used in the order required by Rule 18 quoted above. Claimant White was not deprived of service as a consequence thereof.

Because there was no violation of the Sleeping Car Agreement, Carrier has declined the employes' claim and respectfully requests your honorable Board to uphold its decision.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives and by this reference is made a part hereof.

OPINION OF BOARD: The Claimant has submitted a claim in this case based upon the fact that he wasn't called first when he alleges he was first out on the extra board.

Mr. Shepherd was an extra man on Train No. 8 on December 20th. On December 21st, he advised the Commissary Agent that a death had occurred in his family and that he was going to attend funeral services out of the city.

The Claimant followed Shepherd on the extra list, and he contends that he should have succeeded Shepherd when he informed the Carrier that he was attending the funeral out of the city. The Carrier employed Shepherd ahead of the Claimant when Shepherd returned from the funeral.

The Claimant alleges that when Shepherd informed the Carrier concerning the funeral in the family and his decision to attend it, that such information was equivalent to a mark-off.

The Carrier in its final denial of the claim said the following in its letter to the Organization:

"As I see it Porter R. L. Shepherd was an extra man in Chicago on Train No. 8 December 20 and, on December 21, he advised the Commissary Agent that a death had occurred in his family and that he was going to attend funeral services out of the city. He did not lay off. No vacancies developed before his return on December 30. Inasmuch as Shepherd did not mark off, it is completely immaterial what Shepherd did while standing first out on the Extra Board ahead of claimant White. The procedure, I am sure you agree, is a common one for men on the Extra Board and I see no manner in which White was injured. If Shepherd had laid off, or if he had been called for service and was not available, then White would have moved to the first out position and would have been called. But the fact is that White was not first out—Shepherd was and was properly called to work the assignment he did.

“Because there was no violation of the existing sleeping car porters’ agreement in this case I must respectfully decline your claim in behalf of Mr. White.”

The Organization did not choose to deny or rebut the denial of the Carrier, therefore Carrier’s assertions remain unchallenged, and we assume that Carrier’s allegations are true.

We have no affirmative evidence from the Organization’s record sustaining their claim, except mere assertions which is not the equivalent of proof.

The Agreement was not violated.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.

LABOR MEMBER’S DISSENT TO AWARD 11236, DOCKET PM-12698

Award 11236 is in error.

There is no requirement that the Organization respond to the final denial on the property even though it might contain incorrect assertions, yet the majority ASSUMES to be correct, without question, what is stated by the Respondent. This is evident by the opinion as follows:

“The Organization did not choose to deny or rebut the denial of the Carrier, therefore Carrier’s assertions remain unchallenged, and we assume that Carrier’s allegations are true.” (Emphasis ours.)

Yet the same credence is not given to any plea of Petitioner as is evident by summary dismissal of the Organization’s contentions as follows:

“We have no affirmative evidence from the Organization’s record sustaining their claim, except mere assertions which is not the equivalent of proof.” (Emphasis ours.)

While it is known that this Board is not one of equity but of interpretation, this Award clearly shows the inequity and inconsistency in affording credence to allegations or assertions.

If Respondent makes assertions or allegations, they are assumed to be true; but if Petitioner makes allegations, then they must be proven by substantive evidence.

For these and other reasons, Award 11236 is incorrect, should be afforded no precedent value and dissent is hereby registered.

R. H. Hack

Labor Member