Award No. 12192
Docket No. PM-13900

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: . . . for and in behalf of the sleeping-lounge car attendants and the sleeping car porters employed by the New York Central Railroad Company.

Because the New York Central Railroad Company did, through Mr. J. P. Dowey, Superintendent Dining and Sleeping Car Service, and finally through Mr. A. H. Smith, Manager Dining and Sleeping Car Service Department, deny the claim filed for and in behalf of the above named groups of employes in which it was contended that the Company was in violation of the Agreement governing the wages and working conditions of the sleeping car porters and sleeping-lounge car attendants employed by the New York Central Railroad when it required these employes to leave their jobs in the sleeping-lounge cars and proceed up to the day coaches and take charge of the handling of pillows to the passengers in the day coaches.

And further, for the New York Central Railroad Company to be directed to discontinue the requirement that the porters on the sleeping-lounge cars or on the sleeping cars handle the disposition and collection of pillows in the day coaches on the New York Central trains as being in violation of the rules of the Agreement above-mentioned.

EMPLOYES' STATEMENT OF FACTS: Your Petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is duly authorized to represent all employes of the New York Central Railroad System classified as sleeping car porters and sleeping-lounge car attendants, and in such capacity, it is duly authorized to file claims for and in behalf of these employes as provided for in the Agreement between the New York Central Railroad and its sleeping car porters and sleeping-lounge car attendants, represented by the Brotherhood of Sleeping Car Porters.

Your Petitioner further sets forth that on or about March 10, 1962, instructions were issued to the sleeping-lounge car attendants operating in Line 191 between Chicago and Buffalo to take the responsibility for selling pillows to the day coach passengers in the day coaches on said train on which the particular sleeping-lounge car operates.

AWARD 9553

"Claim 2 requests that the specified crossing protection work 'be returned and assigned' to employes under the Agreement. It is well established that the Board lacks power to order specific work assignments. * * *"

AWARD 10867

"This Division has consistently refused to order the restoration of positions. See Awards 9416 and 10743."

AWARD 10228

"This Board does not allege authority to direct the Carrier in its method of operation. When, however, its method of operation conflicts with the terms of the Agreement, we cannot hesitate to direct compliance with the terms thereof."

Second Division AWARD 3453

"The claim is in two parts: (a) asks that the carrier be required to 'Cease and desist . . .' This Board lacks authority to direct a carrier as to how it shall conduct its operation; we only have authority to interpret and apply the agreements of these employes of which the Railway Labor Act gives us jurisdiction."

First Division AWARD 15615

"We can find no support in rules or awards which would uphold employes' position in this docket. This Board is without authority to direct methods of operation when no rule or agreement has been violated by the practice sought to be changed."

CONCLUSION

Carrier respectfully submits that the facts show conclusively it has never, either by agreement or practice, relinquished its right to assign to lounge-sleeping car attendants the work involved in providing pillow rental service on Train 358, that the assignment of this work is a matter for Carrier's determination and within its managerial authority to direct its business; further, that sleeping-lounge car attendants are fully qualified to perform this necessary service to Carrier's patrons. Claim of the Organization that Carrier violated the Agreement is without merit and should be denied.

All the facts and arguments herein presented were made known to the employes during handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier, on March 5, 1962, began requiring the Sleeping Lounge Car Attendant on Train 358 to rent out pillows to occupants of coaches for a charge of 35 cents each, which funds were remitted to the said Carrier at the end of the trip together with receipts for the sale of food and beverages.

The question at issue is whether or not the Carrier is violating the Agreement between the parties by requiring sleeping-lounge car attendants to handle pillows for passengers in the day coaches. The Organization contends that this requirement violates the Scope Rule which reads as follows:

> "These rules shall constitute an agreement between the New York Central Railroad and employes of the said company in the classifications of sleeping car porter and sleeping-lounge car attendant."

In other words, Petitioner claims that since the language of the Scope Rule specifies that these new duties be performed by sleeping car porters and sleeping-lounge car attendants, the Carrier violated the Agreement by requiring the performance of duties in the day coaches. The position of the Carrier is that there is nothing in either the Scope Rule or any other rule of the Agreement nor of the practice of the parties thereunder which prohibits assigning this work to the Claimants. Petitioner further points to the fact that Claimants do not receive extra compensation for this work, but no claim is being made for compensation. Even if such claim were being made, it could not be considered because this issue was not raised by the Petitioner on the property when the case was processed.

It should be noted that the Scope Rule of the Agreement does not spell out the specific and particular duties required of the sleeping car porters and sleeping-lounge car attendants. There are numerous Awards of this Board, as exemplified in **Award 1418**, which hold as follows:

> "In the absence of more explicit language in the agreement, it cannot be held that the practice involved in the instant case constitutes a violation of the agreement, and the claim should be denied."

To the same effect, see Awards 2491, 5331, 6655, 6697, 7073, 7362, 7849, 7918, 8218, and many others. Also apposite to the instant case is Award 7172, which holds:

> "* * * But the agreement nowhere specifies that the Carrier may not change assignments or institute new ones as its operations require."

In a recent case, Award 11923, this Board reiterated its approval of the above line of cases by holding:

> "Neither the record nor any argument advanced by the Petitioner points to any rule or agreement violated by the Carrier which prohibits Carrier from assigning the duties in question to the claimants."

Dispositive of the case at bar, we concur with the holding in Award 7170:

> "However, there are areas of work wherein no class or craft has claimed exclusive jurisdiction — such as the work which is the subject of this dispute. We cannot hold in such case that Carrier is precluded from assigning this work when necessary because it is not covered by the scope rule in any of its agreements. * * * If the new duties and responsibilities are in fact of sufficient proportion so that the employes feel that they are entitled to additional compensation, their recourse is to negotiation with the Carrier under Section 6 of the Railway Labor Act. See Award 7093."

As further evidence that the Agreement between the parties in the instant case does not limit the work of Claimants to any particular type of car in the train, the record shows that in negotiating the current Agreement, the Petitioner proposed and the Carrier rejected a rule which would have confined work of the Employes covered thereby to sleeping cars and sleeping-lounge cars. It is not within the authority of this Board to grant a rule by interpretation that was rejected by the Carrier at the bargaining table. In effect, the granting of the claim advanced by the Petitioner would constitute a modification or addition to the agreement reached by the parties. Otherwise stated, this Board is being asked to grant something the agreement does not provide and which, when proposed by the Petitioner, was rejected by the Carrier. The rule that we are without authority so to do is too well established to require further comment. See Awards 4259, and 8538.

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 12th day of February 1964.