Award No. 1039
Docket No. PM-1042

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "For and in behalf of the porters operating out of the San Francisco, California District because the Pullman Company did deny the claim initiated in the San Francisco District to have a new service known as the Treasure Island Special operated by the porters of the San Francisco District; and because said new service or Treasure Island Special from May 22, 1939 has been operated by porters of the Chicago Northern District in violation of Rule 40 of the agreement between the Pullman Company and its porters, attendants and maids; and further, for the porters of the San Francisco District who should have been allowed to operate on said new service or Treasure Island Special, to be allowed to operate on said new service in accordance with Rule 40 of the aforementioned agreement and to be paid for any time lost by reason of not having been allowed to operate on said new service."

EMPLOYES' STATEMENT OF FACTS: "Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is the duly designated and authorized representative of all porters, attendants and maids in the service of the Pullman Company under the provisions of the Railway Labor Act.

"Your petitioner further sets forth that in such capacity it is authorized to represent the porters of the San Francisco, California District in connection with the claim to have assigned to that district certain new service that was established between Chicago, Illinois and Oakland, California, on a new train known as the TREASURE ISLAND SPECIAL.

"Your petitioner further sets forth that on or about May 22, 1939 the above-mentioned new service was established, and that the Pullman cars that were operated on said new service required some twelve or fourteen porters to maintain the service.

"Your petitioner further sets forth that the Pullman Company, when this new service was established, furnished the porters from the Chicago Northern District of Chicago, Illinois rather than from the San Francisco, California District.

"Your petitioner further sets forth that by virtue of Rule 40 of the Agreement then and now in effect between the Pullman Company and its porters, attendants and maids, the porters to operate the service on the above-mentioned TREASURE ISLAND SPECIAL should have been assigned from the San Francisco, California District.

"Your petitioner further sets forth that it did take up with Superintendent Armstrong of the San Francisco, California District the question of

amount of summer seasonal business, it was anticipated in May that there would be a sufficient number of porters in other Chicago districts to meet any requirements for additional porters required for summer seasonal lines. Naturally, this would necessitate no change of residence. A good many porters were on furlough in the Chicago Eastern, Chicago Southern, Chicago Central, and Chicago Western Districts the latter part of May, and the first part of June. The Company anticipated the Chicago situation correctly, and was able to meet the requirements for porters in the Chicago Northern District for the summer with porters living in Chicago, except that it became necessary to transfer 12 furloughed porters from the Louisville District to the Chicago Northern District in July.

"Had travel to the San Francisco Golden Gate Exposition developed to the extent anticipated, it would undoubtedly have been necessary to have transferred porters to San Francisco from Memphis, and points even further away. Had the Treasure Island Special been assigned to the San Francisco District, this would definitely have been necessary. To have transferred 12 porters to the San Francisco District from points so far removed to man the Treasure Island Special would have been decidedly unfair, when assignment of the runs to the Chicago Northern District necessitated the transfer of no porters.

"It has been shown that the number of extra porters in the San Francisco District at the time of the inauguration of the Treasure Island Special was insufficient to man this train without transferring additional porters to San Francisco. It has also been shown that the number of extra employes in the Chicago Northern District at this time was sufficient to permit assignment of the train to this district without necessitating any transfers of porters, even between Chicago districts. Therefore, because there was insufficient porters in the San Francisco District at the time this train was inaugurated, this Company fully complied with the intent and meaning of Rule 40, by assigning this train to the Chicago Northern District. There has been no violation of the Rule, consequently, the claim is without merit, and should be denied." (Exhibits not included.)

OPINION OF BOARD: The evidence shows that seasonal train known as the "Treasure Island Special" was inaugurated May 22, 1939, and was discontinued after the departure of train leaving San Francisco, September 25, 1939. A train was scheduled to depart from each terminal (Chicago and San Francisco) every sixth day. Porters of the Chicago Northern District were assigned to this service.

The "Treasure Island Special" service was discontinued in September 1939 and, that part of the claim asking that porters of the San Francisco District be allowed to operate on the "Treasure Island Special" should be dismissed.

There was no showing of any time lost and that part of the claim asking that San Francisco District porters be paid for time lost by reason of not being allowed to operate on the "Treasure Island Special" should be denied.

The apparent cause of dispute arose by reason of conflict of opinion as to the application of Rule 40—"Assignment of Runs to Districts."

The factors to be considered in determining the "Assignment of Runs to Districts" are stipulated in Rule 40 and for the purpose of this award require no interpretation.

The parties are in dispute as to whether, in the event new service is to be established and it becomes necessary to assign the new service or runs to one of the districts involved, the factors stipulated in Rule 40 should be based or reckoned on conditions as of the date the new service is placed in operation or on conditions that may be anticipated in the near future and subsequent to the actual establishment of the new service.

The Board holds that hereafter the factors stipulated in Rule 40 should be given consideration on the basis of conditions existing on the day the new service is actually established.

This is not intended to prohibit assignment of runs to a district in advance of actual establishment of new service if conditions in the districts involved are known in advance or can be forecast with accuracy, and the assignment made is in conformity with Rule 40.

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 employe involved in this dispute are respectively carrier and employe 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 for assignment to non-existent runs must be dismissed and the claim for pay for time lost is denied. The interpretation of Rule 40 set forth in the Opinion shall govern in the future.

AWARD

Claim to be disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1940.