# Award No. 1081
# Docket No. PM-1001

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**I. L. Sharfman, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF SLEEPING CAR PORTERS

## THE PULLMAN COMPANY

**STATEMENT OF CLAIM:** "For and in behalf of Isaiah Anderson, who is now employed as a porter by the Pullman Company, operating out of the Chicago Central District. Because the Pullman Company did on March 7, 1939, deny the claim of Porter Isaiah Anderson for the establishment of his wage status as being in the 'over 15 years class,' and adjustment of his compensation on that basis as of October 12, 1938, in accordance with Rule 2 of the Agreement between the Pullman Company and Porters, Attendants and Maids in the service of the Pullman Company in the United States of America and Canada, effective October 1, 1937.

"More particularly, the Brotherhood of Sleeping Car Porters, in filing this claim, requests an interpretation of the above mentioned rule, or the method of determining when Porter Isaiah Anderson was entitled to be paid at the 'over 15 years rate of pay.' "

**EMPLOYES' STATEMENT OF FACTS:** "Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully represents 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 duly authorized to represent Isaiah Anderson who is now, and since October 12, 1923 has been, employed by the Pullman Company as a porter operating out of the Chicago Central District.

"Your petitioner further sets forth that under date of February 23, 1939 a claim was initiated for and in behalf of Porter Anderson for the purpose of establishing his wage status under Rule 2 of the agreement now in force between the Pullman Company and its Porters, Attendants and Maids at the 'over-fifteen years' rate of pay as of October 13, 1938, and for the compensation of Porter Anderson to be adjusted on the basis of the 'over-fifteen years' rate of pay as of October 13, 1938.

"Your petitioner further sets forth that under date of March 7, 1939 Superintendent Langehennig of the Chicago Central District denied the above mentioned claim of Porter Anderson, setting forth that there was deducted from Porter Anderson's service time two months and twenty-two days, and further establishing his eligibility for the 'over-fifteen years' rate of pay as of January 4, 1939.

October 1st, 1937, and its provisions are not retroactive. Porter Anderson was furloughed twice in 1934; therefore, under the then existing practice, in the absence of specific covering by rule, it was proper to deduct his time on furlough in computing the application of the 'Over 15 Years' rate of pay for him. Because no provision of Rule No. 2 could apply to furloughs occurring in 1934, the rule is not applicable in the instant case; consequently, no question of its interpretation can be involved.

"This Company has shown that, prior to October 1st, 1937, no rule existed specifically covering the computation of time on furlough as applicable to determining when progressive rates of pay were to become effective. The practice prior to October 1st, 1937, has been clearly demonstrated. The intent of the parties, with respect to this question when writing the current Agreement, has been shown. Prior to the present Agreement credit in the application of progressive rates of pay was never allowed for time Porters, Attendants, and Maids, were furloughed. The Third Division, National Railroad Adjustment Board, has in prior awards, held to the principle that, in the absence of specific covering by rule, past practice governs. Its Award No. 663 is an award in point. Porter Anderson was properly paid at the '5 to 15 Years' rate of pay for the period involved in this claim. Equally correctly he was granted the 'over 15 Years' service rate on January 4th, 1939. His rights have received full recognition. The present claim is groundless, and should be denied."

**OPINION OF BOARD:** Both the carrier and the employes have submitted more extreme contentions in this proceeding than the facts of the case and the rules applicable thereto appear to warrant. The carrier contends that all furloughs must be deducted, in conformity with its past practice of counting only years of actual service, in applying progressive rates of pay; the employes, on the other hand, contend that the seniority date of the employe is the sole controlling factor, though pointing out, at the same time, that the corrected seniority lists resulting from the Mediation Agreement of August 25, 1937, must be assumed to reflect all deductions for past furloughs. Neither position need be upheld in disposing of this proceeding. This claim was presented under the Agreement of October 1, 1937, and Rule 2 (f) of that Agreement expressly specifies what deductions for furloughs may be made. This rule is a compromise between the two extreme positions: it neither authorizes deductions for **all** furloughs, nor does it foreclose **any** deductions for furloughs. It provides, in the application of progressive rates of pay, that "when an employe is furloughed for a period of more than ninety (90) days, the time in excess of ninety (90) days shall be deducted," with the additional stipulation that "separate periods of . . . furlough shall not be cumulative when service intervenes." This rule, while applicable of course only to claims arising subsequent to October 1, 1937, the effective date of the operative agreement, embraces periods of service and of furlough from the date when the claimant was first employed. In the very nature of the case, the application of progressive rates of pay, for which specific provision was included in the Agreement, involves a continuing period running back, for most of the employes of the carrier, to dates of first employment prior to the negotiation of the Agreement, and this factual situation must be assumed to have been accepted as conditioning the operation of Rule 2 (f). While the seniority rules may be deemed to be independent of Rule 2 (f), there is nothing in the Agreement to indicate that the parties contemplated, in applying Rule 2 (f), that part of the period of employment shall be subject to the carrier's past practice and part of it to the requirements of that rule. The current application of the current rule to a necessarily continuing period of employment does not render that rule improperly retroactive in effect. Since, in this proceeding, the claimant's furlough of two months and twenty-two days does not fall within the deductions specified in Rule 2 (f), he was entitled to the "over 15 years" rate of pay as of October 13, 1938, fifteen years after the date of his first employment.

**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 carrier has misapplied Rule 2 (f) of the Agreement.

AWARD

Claim sustained on basis of interpretation of Rule 2 (f) set forth in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of May, 1940.