

Award No. 1237
Docket No. PM-1355

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF SLEEPING CAR PORTERS

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: "Claim of Porter William O. Williams for \$4.85 applied to deadheading performed Chicago to Minneapolis, January 18th-19th, 1940."

JOINT STATEMENT OF FACTS: "Porter William O. Williams had been assigned to service on car 'B' operating on trains 15 and 16 as between Chicago and Tacoma. The car upon which Porter Williams was operating was discontinued upon arrival Tacoma on January 5th. Porter Williams was held at Tacoma until January 11th following which he deadheaded to Chicago arriving January 14th. Resulting from car 'B' being discontinued Porter Williams requested permission to displace a junior employe assigned to operate as between Minneapolis and Omaha via Aberdeen which permission was granted. In order for Porter Williams to get on this assignment it was necessary for him to deadhead Chicago to Minneapolis, which he did, departing Chicago train No. 3-103 10:45 P. M. January 18th arriving Minneapolis 11:05 A. M. January 19th, 1940.

"The parties to this dispute request the privilege of oral and other presentation at the time hearing is held."

POSITION OF EMPLOYES: "This claim was initiated by the Brotherhood of Sleeping Car Porters as provided for under the provisions of Rule 46 of the agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Brotherhood of Sleeping Car Porters covering rates of pay, hours of service and working conditions of sleeping car and chair car porters, effective June 1, 1939.

"Specifically, this claim is for and in behalf of Porter William O. Williams for the sum of \$4.85 which sum, the Organization maintains, is due Porter Williams for work performed in accordance with the provisions of the contract and for which the Management has refused to compensate Porter Williams.

"More particularly, the Brotherhood of Sleeping Car Porters sets forth that Porter Williams performed services on the date of January 18, 1940 wherein he deadheaded at the direction of the Management on Company business on a pass on train No. 103, leaving Chicago on January 18, 1940 at 10:45 P. M., arriving Minneapolis, January 19, 1940 at 11:05 A. M. Under

"Under date September 30th, 1939 Porter Stafford Whitney was awarded by bulletin parlor car run on trains 201-200 operating as between New Lisbon and Star Lake and by reason of his having made application for this assignment which resulted in his deadheading, the deadheading was not paid for.

"Under date October 10th, 1939 Porter Charles Forbes, whose run was disturbed, displaced Stafford Whitney on parlor car operating on trains 201-200 as between New Lisbon and Star Lake and while Whitney was paid for deadheading from New Lisbon to Chicago, Porter Forbes was not paid for deadheading Chicago to New Lisbon because deadheading resulted from his exercising his seniority.

"Under date March 31st, 1940 Porter Motier Williams was assigned to the tourist car runs operating between Minneapolis and Omaha by reason of his being the senior bidder and this necessitated his deadheading from Chicago to Minneapolis, however, inasmuch as the deadheading resulted from his having exercised seniority it was not paid for.

"There would be many other instances of porters deadheading in the exercise of seniority and who were not paid for the deadheading performed all of which could be verified by payroll records, however, it is believed the instances cited above together with the information contained in communication to Secretary Johnson July 31st, 1940 would indicate to the Board the practice with respect to applying payment for deadheading.

"It is the position of the carrier that to deadhead on company business would be to deadhead on instructions of the company but where the deadheading resulted from voluntary action on the part of the porter it could not be considered as deadheading on company business.

"In the instant case Porter Williams exercised his seniority to displace a junior employe assigned as between Minneapolis and Omaha which necessitated his deadheading from Chicago to Minneapolis and while of course Porter Williams was furnished with a pass, this was done resulting from a request from him for transportation to permit his proceeding from Chicago to Minneapolis without payment of railroad fare but certainly this would not determine deadheading as being on company business.

"In view of the above information it is believed the Board will realize the payment claimed should not be allowed and will so decide."

OPINION OF BOARD: The agreement involved in this dispute is the same agreement as that involved in Third Division Award 1106. The controlling facts and the issues are identical to those in Award 1106. We are satisfied with the reasons advanced to support this prior award and hold that it controls the disposition of this dispute.

In this case it is contended that the portion of the Opinion in Award 1106 which states: "This interpretation is confirmed by the Carrier's allowance to the same employe for deadheading in the opposite direction after the exercise of his seniority rights." was based upon erroneous information furnished by the Carrier. However this may be, that statement in the Opinion is not controlling of the decision. The decision was based upon a construction of the relevant contract provision, and not upon any action of the Carrier. The statement was apparently inserted not as a reason for the decision, but simply as a confirmation by the Carrier of the reasoning upon which the decision is based.

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 there was a violation of Rule 8 of the Agreement by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1940.