Award No. 1604
Docket No. PM-1566

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: ". . . for and in behalf of C. Crenshaw who is now and for a number of years has been employed by The Pullman Company, operating out of the district of San Francisco, California. Because The Pullman Company did, under date of October 23, 1940, deny the claim instituted by the Brotherhood of Sleeping Car Porters for and in behalf of porter Crenshaw for the establishment of his wage status as being in the 'over-fifteen-year' class as of August 22, 1940 and the adjustment of his compensation on that basis in accordance with Rule 2 of the agreement between The Pullman Company and its porters, attendants and maids in the service of The Pullman Company of the United States of America and Canada, effective October 1, 1937. And further, for porter Crenshaw to be paid for the wages lost by reason of his not having been given the 'over-fifteen-year' rate as of August 22, 1940."

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, as is provided for under the provisions of the Railway Labor Act.

"Your petitioner further sets forth that in such capacity it is duly authorized to represent C. Crenshaw who is now and for some fifteen years past has been employed by the Pullman Company, presently operating out of the district of San Francisco, California.

"Your petitioner further sets forth that under date of October 24, 1940, a claim was initiated for and in behalf of C. Crenshaw 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 August 22, 1940.

"Your petitioner further states that Superintendent Armstrong of the San Francisco District, under date of November 23, 1940 denied the claim of porter Crenshaw setting forth that there was one year, five months and eleven days deducted from the service time of porter Crenshaw between January 11, 1932 and March 9, 1934, and that porter Crenshaw would not be entitled to the 'Over-fifteen-years' rate of pay until October 23, 1941. Further contending that under Item 6 of the Mediation agreement that this claim is precluded.

"Appeals in the case were taken as provided for under the agreement then and now in effect between the Pullman Company and its porters attendants and maids, up to and including Mr. B. H. Vroman, Assistant to the

occurring intermittently from January 11, 1932, to March 10, 1934, we find one hundred days only is deductible. Since this is true, the claim to an 'over-fifteen-years' rate beginning on August 22, 1940, as advanced by the Brotherhood, must be predicated on Item No. 4 of the Mediation Agreement. Nevertheless the Brotherhood invokes Rule 2 (f) of the 'Porters' Agreement' as also in support of its claim. Rule 2 (f) specifically provides for deductions only where the furlough is in excess of ninety days. Applying this rule to Porter Crenshaw's furlough record we find that only in the periods from January 10, 1933, to June 22, 1933, and from December 1, 1933, to March 10, 1934, does an excess of ninety days exist. That excess is two months and twelve days in the first furlough and nine days in the second, or a total deductible period of but eighty-one days in all. Thus the Brotherhood contends both regulations apply to Crenshaw's claim and yet, obviously, the deductions under the two differ. August 22, 1940, is the date for the 'over-fifteen-years' rate to begin if Item No. 4 of the Mediation Agreement is advanced, while August 3, 1940, if the Porters' Agreement is relied upon. The Pullman Company maintains that neither agreement referred to by the Brotherhood has proper application to this case.

"Moreover, an additional inconsistency exists in the Brotherhood's position in its reliance on Rule 2 (f), while at the same time asserting that seniority alone governs the application of step rates of pay. Rule 2 (f), in itself, recognizes deductions of time in computing step rates of pay, whereas the seniority date posted as of January 1, 1938, must remain intact and is subject to no deductions.

CONCLUSION: "This Company has shown that prior to October 1, 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 established practice of deducting the total time has been clearly demonstrated. It has further been shown that seniority rights and service rights are entirely separate and distinct, and, therefore, furlough deductions made on the corrected seniority roster of January 1, 1938, as provided for under Item No. 4 of the Mediation Agreement, have no bearing on the issue in this case. Rule 2 (f) of the October 1, 1937, Agreement has also been shown to have no application since the furloughs involved in this claim all occurred prior to 1937. Rule 2 (f) is furthermore not retroactive by the express stipulation of Item No. 6 of the Mediation Agreement of August 25, 1937, and by the intent of the contracting parties as evidenced by the language and nature of its provisions.

"The Brotherhood, in support of its claim in this dispute, has relied on both the seniority date accorded Porter Crenshaw under Item No. 4 of the Mediation Agreement, and also on Rule 2 (f) of the Porters' Agreement which dual reliance has been shown to be inconsistent to the August 22, 1940, date of its claim.

"Since neither of these Agreements has proper application to this case, this Company respectfully submits that its action in deducting the full period of one year, five months and eleven days in accordance with the then existing established practice was entirely proper, and, therefore, the present claim should be denied."

OPINION OF BOARD: C. Crenshaw was employed as porter by the Pullman Company on May 12, 1925. So that there can be no misunderstanding as to the position of the Employes we quote from their submission:

> "It is the contention of the petitioner that under Rule 2 of the agreement between the Pullman Company and its porters, attendants and maids, Crenshaw should have his wage status established as being in the 'over-fifteen-years' class as of August 22, 1940, and that this should be based upon his recognized seniority date as it appears on the seniority roster of January 1, 1938, which roster was established

in accordance with Item 4 of the Mediation agreement between The Pullman Company and the Brotherhood of Sleeping Car Porters, dated August 25, 1937.

"The petitioner further maintains that Rule 2 of the agreement above referred to sets forth the progressive rates of pay for porters ranging from the minimum of $89.50 up to the 'Over-fifteen-years' rate of $100.50 and it is the contention of the petitioner that the seniority rule determines the employe's number of years in the service by stipulating when his seniority begins.

"Seniority rosters are maintained in accordance with the contract and on the seniority rosters it is stipulated as to the number of years in the service that are recognized by the Management. The petitioner maintains that the seniority rosters on which are the recognized number of years that a porter has in the service is for all purposes in the contract except where there has been exceptions made as provided for in paragraph F in Rule 2."

The Board reaffirms its holding in Award 1081 and Award 1603 that the seniority date fixed under the Mediation Agreement of August 25, 1937 is the date from which the "over 15 years' " rate of pay applies less deductions prescribed under Rule 2 (f) of the agreement. The record in this case fails to show that the seniority date fixed by the agreement of August 25, 1937 is the date contended for by the Employes. The burden of showing this being upon the Employes, it follows that they have failed to produce the proof necessary to sustain the claim.

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 upon the record presented claim cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of November, 1941.