

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS
THE PULLMAN COMPANY

STATEMENT OF CLAIM: "... of the intention of the Brotherhood of Sleeping Car Porters to file with your Honorable Board on February 17, 1941 an ex parte submission in its own behalf because The Pullman Company did deny the claim submitted by the Brotherhood of Sleeping Car Porters under date of June 15, 1940 to said Pullman Company through District Superintendent E. P. Schwotzer of the Pennsylvania Terminal District for violation of the agreement between The Pullman Company and its porters, attendants and maids, and for the violation of Sections 1 and 5 of the Supplementary Agreement between The Pullman Company and the Brotherhood of Sleeping Car Porters dated September 30, 1937, and signed, respectively, by Champ Carry, Vice President of The Pullman Company and A. Philip Randolph, International President, Brotherhood of Sleeping Car Porters concerning the placing on the seniority rosters of the Commissary Department of the Pennsylvania Terminal District the names of divers attendants, to wit; E. C. Mantilles, L. L. Hernandez, S. M. Arciago, F. S. Saclayan, S. G. Udasco and H. B. Aromin, which attendants' names, the Organization maintains, were placed on the seniority roster of the Commissary Department, Pennsylvania Terminal District, in violation of the rules of the agreement above referred to between The Pullman Company and its porters, attendants and maids and contrary to the provisions of the sections of the Supplementary Agreement stipulated above. And further, for the names of these attendants to be put in their proper place on the seniority roster of the Commissary Department, Pennsylvania Terminal District, in accordance with the rules of the agreement above referred to. And further, for the Pullman Company to reimburse such attendants in the Commissary Department, Pennsylvania Terminal District, who have suffered loss of pay by virtue of the action of the Company in this particular instance."

EMPLOYEES' 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 employed by the Pullman Company as provided for under the provision of the Railway Labor Act.

"Your petitioner represents that in such capacity it is duly authorized to prosecute the claim in the instant case.

"Your petitioner further sets forth that it did, under date of June 13, 1940, file claim contending violation by the Pullman Company of Rule 32 of the agreement between its porters, attendants and maids and Sections 1 and 2 of the Supplementary agreement between the Pullman Company and the Brotherhood of Sleeping Car Porters, dated September 30, 1937,

"Had the seniority dates of the six attendants involved herein been computed incorrectly under the Supplemental Agreement of September 30, 1937, it was necessary for protest to have been filed within the time limit prescribed in Rule 28 of the working Agreement. That rule reads:

'RULE 28. Seniority Rosters. Separate seniority rosters of each class, showing name and seniority date of employees, numbered in chronological order, in the respective districts, shall be revised and posted as of January 1st each year in a place accessible to those affected.

'The following rosters shall be established:

- (a) Porters (including porters-in-charge)
- (b) Attendants
- (c) Maids

'A copy of each seniority roster shall be furnished the Chairman of the Local Grievance Committee in the respective districts at the time posted.

'An employee shall have sixty (60) days from date his name first appears on the roster to protest his seniority date or relative position on the roster, except, where an employee is absent on leave or because of sickness at the time the roster is posted, this time limit shall apply from the date such employee returns to duty. If no such protest is taken within the sixty (60) day period, future appeals shall not be recognized, unless the employee's seniority date or relative standing on the roster is changed from that first correctly posted.'

"The organization has 'slept on its oars' in having failed to protest the seniority dates of the six employees involved in this dispute until June 15, 1940. Copies of the rosters posted in October, 1937, and January, 1938, were furnished the Local Grievance Committee Chairman and had the organization intended to file a protest, it should have been done within sixty days from the date the roster of October 10, 1937, was posted with respect to Attendants Mantilles, Hernandez, Arciago, Saclayan and Udasco, and within sixty days from the date the January 1, 1938, roster was posted with respect to Attendant Aromin. No protest by the organization, or from any other source, having been made within these time limitations, the seniority dates posted became 'frozen,' and as expressly stipulated in Rule 28, no future appeals can properly be recognized.

"To change the seniority dates of the six employees involved in this dispute would constitute a violation of Item 11 of the Supplemental Agreement of September 30, 1937, and Rule 28 of the working Agreement of October 1, 1937. Consequently, the claim should be denied."

OPINION OF BOARD: In the light of Rule 32 of the agreement, effective October 1, 1937, there can be no doubt that the attendants, named in the claim, were accorded seniority rights in the Pennsylvania Terminal District to which they were not entitled when the seniority rosters were made up and posted pursuant to the Supplemental Agreement of September 30, 1937. Rule 28 of the agreement effective October 1, 1937, however, provides as follows:

"SENIORITY ROSTERS. Separate seniority rosters of each class, showing name and seniority date of employees, numbered in chronological order, in the respective districts, shall be revised and posted as of January 1st each year in a place accessible to those affected.

"The following rosters shall be established:

- (a) Porters (including porters-in-charge)
- (b) Attendants
- (c) Maids

"A copy of each seniority roster shall be furnished the Chairman of the Local Grievance Committee in the respective districts at the time posted.

"An employe shall have sixty (60) days from date his name first appears on the roster to protest his seniority date or relative position on the roster, except, where an employe is absent on leave or because of sickness at the time the roster is posted, this time limit shall apply from the date such employe returns to duty. If no such protest is taken within the sixty (60) day period, future appeals shall not be recognized, unless the employe's seniority date or relative standing on the roster is changed from that first correctly posted." (Emphasis added.)

Except as to Aromin no protests were filed against the seniority rating accorded the attendants, named in the claim, within sixty days from the date the rosters were posted pursuant to the Supplemental Agreement of September 30, 1937. The Carrier contends that the claim is, therefore, barred.

The Brotherhood contends that the rule does not, in effect, differ with the pre-existing rule relating to protests of seniority rosters contained in the agreement effective June 1, 1929 which provides:

"SENIORITY. Rule 4 (d). Separate rosters showing seniority of the respective classes of employes covered by this agreement will be revised and posted in January of each year in a place accessible to those affected, and will be open to correction for 60 days. The names of the employes will be shown on the roster in accordance with seniority."

Undoubtedly under Rule 4 (d) a correction could be made in the roster posted each January upon protest filed within 60 days. To place such a construction on Rule 28, however, we would have to ignore and hold meaningless the language we have emphasized in the above quotation.

The purpose of making that change in the rule relating to protests is quite obvious. In consolidating commissary districts and setting up separate seniority rosters for attendants, porters, and maids, it was anticipated, no doubt, by the parties to the agreements, that disputes as to seniority rights would arise. The purpose of the last sentence of the rule was to set at rest any such disputes once and for all if no protests were filed within sixty days from the first posting.

A rule of similar import was construed in Award 250 and held inapplicable as to a claimant whose name had not appeared on any roster posted under the agreement there involved. Obviously, that award is not authority for the contention here made.

It is said in Award 444:

"... This claim is made by the General Committee of the Order of Railroad Telegraphers, one of the two parties to the Agreement or schedule of rules and regulations between the employes and the carrier and is not a grievance presented by an individual of a character coming under the application of Article 5 (i) of the schedule. Further, this claim is a contention of one of the principals of the agreement with the other over the application or misapplication of a rate or rule whose proper application is a matter of mutual or joint responsibility."

To apply that dictum to this case would nullify the plain and unambiguous terms of Rule 28. This the Board declines to do.

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 employees involved in this dispute are respectively carrier and employees 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 is barred under Rule 28 of the agreement effective October 1, 1937.

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.