

Award No. 1704

Docket No. PM-1735

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: . . . For and in behalf of J. W. Penny who is now and for a number of years past has been employed by The Pullman Company as a porter operating out of the District of St. Louis, Missouri. Because The Pullman Company did, under date of November 9, 1940, deny the claim filed by the Organization for and in behalf of porter Penny which claim was for pay for twelve (12) hours wage loss suffered by porter Penny because of the improper use in extra service of porters Penny and Andy Banks in violation of the contract between The Pullman Company and its porters, attendants and maids, effective October 1, 1937. And further, for porter Penny to be compensated for said wage loss.

EMPLOYES' STATEMENT OF FACTS: Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is duly authorized to represent all porters, maids, attendants and bus boys employed by The Pullman Company as it 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 J. W. Penny, who is now and for a number of years past has been employed by The Pullman Company as a porter operating out of the district of St. Louis, Missouri.

Your petitioner further sets forth that it did, on or about November 8, 1940, file a claim with The Pullman Company as it is provided for under the provisions of the Agreement between The Pullman Company and its porters, attendants and maids, effective October 1, 1937, for violation of said contract in the assigning of Porter J. W. Penny to a run operating out of the St. Louis, Missouri District.

This claim was for Porter Penny to be paid twelve (12) hours on account of wages lost due to the improper use of extra service by Porters Penny and Andy Banks in the St. Louis District by the Company's St. Louis District office on November 7, 1940 in violation of Rule 46 of the Agreement above referred to.

This claim was denied by Superintendent Hanson of the St. Louis, Missouri District under date of November 9, 1940, and appeals were taken in this matter through the regular channels up to and through Mr. B. H. Vroman, Assistant to the Vice President, who, after an unusual amount of delay, rendered decision under date of June 5, 1941, in which the claim was essentially denied. The Organization did, under date of July 5, 1941 file notice with the National Railroad Adjustment Board of its intention to file an ex parte submission for and in behalf of J. W. Penny in this case, and on the same day and date copy of said notice was served on Mr. B. H. Vroman, Assistant to the Vice President of The Pullman Company.

of the National Railroad Adjustment Board for consideration. The petitioner's confused reasoning and interpretation of the rules are further exemplified in the James dispute. In the James case, the organization contends that James is entitled to an adjustment in compensation in an amount representing the difference between what Porter Jackson, whom the organization contends was wrongfully assigned in place of James, earned and the amount James earned within the same period. In the Penny dispute, however, the organization is contending for pay for Penny for the time Banks was used out ahead of Penny. If we applied the organization's contentions in the Penny case to the James dispute, we would find the petitioner asking for an adjustment in pay for James for but fifteen minutes instead of an approximation of two days, and, if we applied the organization's claims in the James dispute to the Penny case, we would find that Penny was overpaid, he having received pay for a total of 23:30 hours for a special service trip to Columbus and a return to St. Louis deadhead-on-pass, whereas Banks was paid for two and one-half days, the equivalent of twenty hours, for his trip St. Louis to New York and return.

The layovers of Porters Penny and Banks have been computed in accordance with a correct interpretation of the rules of the Agreement and, since their layovers were properly computed, they were signed out properly. Consequently, it obviously follows that there is no basis for the organization's assertions that favoritism is shown in the assignment of extra men out of the St. Louis District.

The Pullman Company submits that Penny's claim is without merit and should be denied.

OPINION OF BOARD: The question here presented is whether the layover of an extra porter, who completes a round trip in a regular assignment in which a periodic relief is provided, should be computed in accordance with Rules 22 and 26 of the Agreement, effective October 1, 1937, thereby giving the extra porter the layover established by the operating schedule of the regular assignment, plus a pro-rata share of the periodic relief, or in accordance with Rules 23 and 46.

In view of the settlement previously made by the parties of a similar dispute involving Porter Glen Smith, the Board holds, under the provisions of the agreement then in effect, this claim should be sustained.

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 this claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of February, 1942.