Award No. 3341

Docket No. PM-3272

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of C. E. Samonte who is now, and for a number of years past has been, employed by The Pullman Company as an attendant operating out of the Chicago District Commissary.

Because The Pullman Company did, under date of May 31, 1945, deny the claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of Attendant C. E. Samonte for the sum of $82.37, which sum of money the Organization maintains was due and payable to Attendance Samonte in connection with service performed in Line 6519 and under the rules of the agreement between The Pullman Company and its porters, attendants, maids and bus boys.

And further, for Attendant Samonte to be paid the amount of money contended for in the claim as stipulated above.

OPINION OF THE BOARD: The Claimant, employed as Attendant in the Pullman service, was regularly assigned to Harbor Point Car, a five double bedroom, buffet-lounge car, operating between Chicago and New York City.

On August 8, 1944, Pullman Car Glendale, a six compartment, three drawing room car, was substituted for the regular car Harbor Point.

October 19, 1944, Pullman Car Golden Horn, a three compartment, three drawing room, fourteen seat, observation lounge car, was substituted for the regular car.

October 23, 1944, Pullman Car Golden Horn was again substituted for the regular car.

December 6, 1944, Car Yellowstone Park, a four compartment, four drawing room car, was substituted for the regular car.

When the Claimant learned of the first substitution, he called the representative of the Company and informed him that he was an attendant operating on the attendants' roster and was not equipped to perform the service on straight sleeping cars. He gave as a further reason that the work was too heavy and as an attendant he was not required to perform service as a porter on cars which did not provide for any attendant's work. He informed the Chief Clerk he was not refusing to go out, but that he just was not going out, and did not do so. Likewise, he did not go out on the other days set forth in his claim, and was not paid for such days.

The Scope Rule of the applicable Agreement is relied upon by Claimant. The Rule provides:

"RULE 1. Scope. This agreement shall apply to all employes of The Pullman Company classified as

(a) Porters (including porters-in-charge when so designated);

(b) Attendants (employes assigned to buffet, club, broiler, restaurant and recreation cars who in addition to other duties are held accountable for commissary supplies and equipment on such cars);

(c) Maids; and

(d) Bus Boys; * * *."

The Rule does classify Pullman service employes, but does not specifically separate the work of the classes of employes embodied therein.

In this connection we are confronted with awards that have determined this question. In Award 3218 we cited with approval Award 1078 of this Division and proclaimed its pertinency with reference to the Scope Agreement here involved as follows:

> "The Scope Rule of the Agreement, upon an alleged violation of which this claim is based, specifies the classes of employes subject to the Agreement; it does not specify the work which may properly be assigned to, or the duties which may properly be required of, these classes of employes. In point of fact, the employes here involved perform a great variety of service for the inclusion of which no express authority either exists or is required to exist. These services have developed in response to the exigencies of particular situations, and no reason appears why the duties prevailing at any given time should be deemed to be definitive."

Language of similar import appears in Award 3218 of this Division and cited with approval in Award 3260 of this Division.

The record disclosed that Claimant had performed service usual and customary to porter service on the Harbor Point Car to which he was assigned, a five double bedroom, buffet-lounge car. It is true that on such car there was certain commissary service to perform as distinguished from the Pullman cars substituted therefor. The higher rate of pay which the Claimant was and is paid is an incident to the commissary service and not because an attendant was not required to perform duties as a porter. The assignment of Claimant to the Harbor Point Car was to make the designation of the assignment certain and does not infer that he was assigned to lounge or buffet car exclusively. We can arrive at no other conclusion in this case, based on the record, the circumstances and the awards of this Division cited herein, than, that the Claimant was under obligation to the Carrier to go out on the run on the days specified in the claim. We have examined Rule 43 of the Agreement as cited, and find nothing therein inconsistent with this view and conclusion.

As stated in Award 3218 and Award 3260 of this Division, the Claimant was not warranted in refusing his assignments on the days in question. In the foregoing Awards, we said in substance:

> "The Carrier is obligated to make the initial interpretation of the rules and direct how the work shall be done. If the contract is violated by the Carrier in so doing, it subjects itself to prescribed penalties. Employes as a general rule must perform the work as directed and in case of contract violation, seek redress under the terms of the agreement."

While the Claimant stated that the work involved in the assignments was too heavy, he offered no evidence to support this contention in addition to such statement.

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 Employes involved in this dispute are respectively carrier and employes 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 action of the Carrier, in refusing payment to the Claimant under the record and circumstances of the instant docket was not in violation of the applicable Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of November, 1946.