Award No. 3750
Docket No. PM-3850

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 C. S. Gauff, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of New Orleans, Louisiana.

Because The Pullman Company did, under date of November 7, 1946, in a decision rendered by T. C. Olney, District Superintendent, New Orleans District, deny the claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of C. S. Gauff under date of August 7, 1946, in which the organization contended that Porter Gauff had suffered a loss in pay because of the violation of certain rules in the Agreement between The Pullman Company and its porters, maids, attendants and bus boys represented by the Brotherhood of Sleeping Car Porters, said rules being stipulated in the original claim filed under the above-mentioned date.

And further, for the claim filed by the organization for and in behalf of Porter C. S. Gauff be allowed and for Porter Gauff to be paid the money loss as contended for by the organization in the above mentioned claim.

EMPLOYES' STATEMENT OF FACTS: Your petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is the duly authorized representatives of all porters, maids, attendants and bus boys employed by The Pullman Company in the United States, as is provided for under the Railway Labor Act.

Your petitioner further sets forth that in such capacity it is duly authorized to represent C. S. Gauff, who is now and since July 31, 1926, has been employed by The Pullman Company as a porter working out of the New Orleans, Louisiana, District.

Your petitioner submits that there is in existence an agreement between The Pullman Company and its porters, attendants, maids and bus boys, represented by the Brotherhood of Sleeping Car Porters, Rules 44 and 45 of which reads as follows:

> "RULE 44. Rights of Displaced Employes. An employe who loses his run through no fault of his own may apply for and shall have the right, in accordance with the provisions of Rule 45, to occupy any assignment in his district where his seniority is greater than that of the junior employe on such assignment, who shall be the one displaced, except where there is a choice of lay-over days, as for example in an assignment requiring three and one-half (3½) employes, he shall be privileged to displace any employe junior to him. The right to apply for another assignment must be exercised

rule and the agreement as a whole will sustain the Petitioner's contention that it was not the intent of the rule to give the Company the right to force a qualified senior employe to lose a half month's pay rather than permit him to go out in his new assignment 11½ hours before the expiration of a six day layover, which was the case when Gauff was told that he could not go out in Line No. 3488½ on September 21st, 1945. The Company's position was that if Gauff wanted to displace Lockett (a junior man) he would have to first let Lockett make the six or seven day trip to California and return, then wait another six days while Lockett's layover expired, all of this time without pay, and then go out in the run some 17 days after applying to exercise his rights under Rule 44. It should be borne in mind that Gauff applied to displace Lockett on September 17, four full days before the assignment was due out.

Under the provisions of the existing agreement porters are not paid for layovers, but for hours worked.

The time loss sustained by Gauff stemmed from the Company's refusal to permit him to place himself in line 3488½ on September 21, 1947. Had there been no violation at that time, the employe would not have lost further time through the subsequent refusals to permit him to go out in line 2715 for which he applied in an attempt to avoid such a severe loss of income. Therefore the Petitioner confines its argument for the time being largely to the controlling violation.

The language used in Rule 44 is clear and not easily misconstrued. It states "An employe who loses his run through no fault of his own may apply for and shall have the right, in accordance with the provisions of Rule 45, to occupy any assignment in his district when his seniority is greater than that of the junior employe on such assignment, who shall be the one displaced. . . ." (Underscoring ours.)

There is nothing in the rule saying or implying that the senior employe cannot occupy the position applied for until a layover expires, or until he loses a half month's pay, or until the Sign Out Clerk condescends to allow him to go out. The obvious intent of the rule is to permit such displacement when the run is next due out and the qualified applicant makes himself available. Any other application of the rule would be pure assumption and would not be in harmony with the language of the rule or the way it has been applied during the life of the agreement.

The question herein involved is: Does the Company have the right under the rules to arbitrarily force senior employes to uselessly suffer severe losses of time and compensation merely to avoid such an employe going on duty a few hours before the expiration of a previous layover?

Your Petitioner earnestly submits that the Company has no such right, that there was no such intention on the part of those who negotiated the agreement, and that therefore this claim should be sustained.

Therefore, the Petitioner asks your Honorable Board to hold an oral hearing to determine the issues herein involved, and further asks that the Board issue an award ordering and directing the Respondent Company to compensate Porter Gauff for the loss of compensation suffered by him through the Company's violation of Rules 44 and 45.

OPINION OF BOARD: This claim for compensation is based on the contention that under Rules 44 and 45 of the Agreement effective June 1, 1941, Porter Gauff, who was displaced by a senior employe, had the right to displace a junior employe prior to expiration of layover accruing to Gauff from his previous trip.

The parties are not only in disagreement as to claimant's rights under Rules 44 and 45, but it appears that such disagreement also involves the application of Rule 16, "Additional Pay When Used on Layover or Relief Days."

As the record contains no evidence as to how these Rules have heretofore been interpreted and applied, claim should be remanded to the parties for disposition in accord with prior interpretation and application of Rules, 44, 45, and 16.

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 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 claim will be remanded for disposition by the parties in accordance with the Opinion.

AWARD

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of January, 1948.