Award No. 4563
Docket No. PM-4466

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of J. E. Brown, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of Los Angeles, California.

Because The Pullman Company did, under date of July 8, 1948, deny a claim filed by this Organization for and in behalf of Porter Brown for the sum of $5.01, which the Organization maintains was due and payable to Porter Brown for services performed during the month of October, 1946, in accordance with the rules of the contract as set forth in the claim.

And further, because said denial of the above-mentioned claim was in violation of the rules of the above-mentioned contract.

And further, for Porter J. E. Brown to be paid the amount of $5.01 contended for in said claim.

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 for all purpose of the Railway Labor Act.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent J. E. Brown, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of Los Angeles, California.

Your Petitioner further sets forth that in line with his regular duties, Porter Brown was assigned to Lines 302½ and 625 during the month of October, 1946, operating out of the city of Los Angeles, California. Porter Brown should have been credited with 199 hours and 35 minutes at the Tourist Car rate of pay and for 16 hours at the Standard Car rate of pay. For the 199 hours and 35 minutes at the Tourist Car rate of pay, he should have been paid at the rate of $199.40 per month or $165.82. For the 16 hours at the Standard Car rate of pay, he should have been paid at the rate of $192.90 per month or $12.86. Porter Brown should have drawn a total amount of $178.68 for the month of October, 1946. He was paid for that month $173.67. Therefore, he was short paid $5.01.

Your Petitioner further sets forth that after having consulted with the Management about this shortage, formal claim was filed for and in behalf of Porter J. E. Brown under date of April 20, 1948. Under date of July 8, 1948, the claim was denied by District Superintendent C. M. Fitzgerald of the Los Angeles District.

tive credit of 93 service hours, and who, in addition, performs irregular service during the same calendar month carrying 170 credited hours. Such porter should be paid for 12 days at his daily rate, for 157 hours at his straight time hourly rate and for 13 hours at the rate of time and one-half (93 hours + 170 hours = 263 hours). The fact should be noted that the example does not specify that the 12 days referred to in the example must occur in a 28, 29 or 30-day month. If the reasoning of the Organization were to prevail here, the employe could not be paid 12 days at his daily rate in a 31-day month. The Rule does not place any such limitation upon the Company, and the conclusion must be reached that under Rule 15 it was intended that the employe should be paid 12 days at his daily rate regardless of the number of days in the month.

Rule 17. Avoidance of Duplicate Payments stipulates that when service is paid for on the day-service basis, the Company is not required to pay for it again on any other basis, except that punitive time shall be paid for at the rate of time and one-half. For example, if a porter operates part time in regular assignment in a 31-day month in such manner as to accumulate 31 days' credit, he is paid for the 31 days at his daily rate and has no other compensation coming unless there are excess hours which are paid for at the overtime rate and at time and one-half for hours in excess of 250.

In view of the foregoing Rules which plainly are controlling in this dispute with especial reference to Rule 5, the Company believes that the Petitioner's claim is unsound.

CONCLUSION

The Company has shown in this dispute that Rules 5, 13, 14, 15 and 17 support the Company's method of compensating employes performing work part time in regular assignment on the day-service basis. The language of these Rules and the provisions thereof conclusively reveal the weakness and inconsistency of the Organization's claim. Agreement with the Organization's position in this dispute would nullify in whole or in part the provisions of Rules 5, 13, 14, 15 and 17. Further, the Company has shown that Porter Brown was compensated in the manner prescribed by the Agreement for the month of October, 1946. Rule 13, cited by the Organization as lending support to it, fails to sustain its claim that Porter Brown should have been compensated for service performed in regular assignment in October, 1946, at his hourly rate of pay.

The Company submits that the practice under the Agreement between The Pullman Company and this class of employes and the specific provisions of Rules 5, 13, 14, 15 and 17 uphold the Company's position. The claim of the Brotherhood of Sleeping Car Porters in behalf of Porter Brown is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The problem here is solely one of contract interpretation. Rule 2 establishes rates of pay on a monthly basis, provides that the daily rate is determined by dividing the monthly rate by the number of days in the current month and that the hourly rate is determined by dividing the monthly rate by two hundred forty. Thus the daily rate varies according to the number of days in the month while the hourly rate is constant.

Rule 3 establishes a basic month consisting of two hundred forty hours service. Rule 5 fixes the method of crediting days of service and Rule 6 fixes the method of crediting hours of service. Rule 13 provides as follows:

> "Rule 13. Payment for Days Credited. An employe completing a regular monthly assignment, properly credited, shall be paid his established monthly wage for such time, except where payment therefor on the hourly basis will produce a greater amount.
>
> Q-1. Why are the words 'properly credited' used in this rule?

A-1. To emphasize that the crediting of time for employes on regular assignments must take into consideration rules providing for the following conditions:

(a) The deduction of time for sleep periods;

(b) The prorating of time when the last trip in the month extends into the following month;

(c) The inclusion of time credited in excess of the normal operating schedule due to delay arrival of trains; and

(d) The crediting of time for trip made on layover or relief days in addition to monthly assignments.

Q-2. An employe completes a round trip in regular assignment in June carrying 12 days' credit and his 4 days' layover credit extending into July. He then lays off or leaves the service. How shall this employe be paid for this trip?

A-2. He shall be paid 8/30ths of his monthly wage for June and 4/31sts of his monthly wage for July.

An employe working part of a month in service credited on the day-service basis shall be paid his current daily rate for such time, except where payment therefor on the hourly basis will produce a greater amount."

Due to the variance of the daily rate with the number of days in the month and the constancy of the hourly rate, there are some situations in a thirty-one day month where a computation of pay based on the hourly rate multiplied by the hours credited under Rule 6 produces a larger amount of pay than the days credited under Rule 5, multiplied by the daily rate. Out of that situation arose this claim.

The language adopted by the parties in Rule 13 is clear and unambiguous. It establishes the basis for calculating the pay due to employes by use of the daily rate "except where payment therefor on the hourly basis will produce a greater amount." That language clearly supports the claim.

The Company resists the claim on the basis that the entire contractual theory of crediting work and paying for it contemplates payment on the daily basis and that the exception refers only to additional or extra hours worked. If that were true there would be no need for Rules 14 and 15 providing for payment for extra hours not paid for on the daily or monthly basis and for overtime hours. Also if such were the intent it would appear that the parties would have worded the exception in Rule 13 somewhat as they worded Rule 14. The intention is to be taken from the words used where the meaning is clear and no ambiguity appears.

The Company calls attention to Q-2 and A-2 within Rule 13 as sustaining its position. That example certainly shows the manner of computing pay on a daily basis but does not mention the exception. When the exception is repeated in the subsequent paragraph of such rule one cannot infer an intention to eliminate it by the question and answer cited.

Proper interpretation and application of a contract requires that each provision thereof be given force and effect unless it is contrary to other provisions thereof. Such is not the case here and this Board has no right to ignore a clear contractual provision adopted by the parties.

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 Company violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1949.