Award No. 4565
Docket No. PM-4468

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 E. W. Evans, who is now, and for some time 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 June 21, 1948, deny a claim filed for and in behalf of Attendant Evans for the sum of $5.88, which the Organization maintains was due and payable to him as provided for under the rules of the agreement stipulated in the claim.

And further, because in not paying Attendant Evans the amount of money specified in the claim, the Company is in violation of the agreement between The Pullman Company and its Porters, Maids, Attendants and Bus Boys.

And further, for Attendant Evans to be compensated for the $5.88 which is due and payable to him as provided for under the rules of the above-mentioned agreement.

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.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent Eddie W. Evans, who is now, and for some time past has been, employed by The Pullman Company as an attendant operating out of the Chicago Commissary District.

Your Petitioner further sets forth that in line with his regular duties, Attendant Evans was assigned to several operations during the month of March, 1948, and according to the services performed, he was entitled to be paid for 21½ days or 171 hours and 20 minutes.

Your Petitioner further sets forth that the amount of money that Attendant Evans should have been paid for services performed during the above-mentioned month for 171 hours and 20 minutes at the rate of $239.60 per month was $172.05. Attendant Evans only drew for the services rendered during that month $166.17, which made a shortage of $5.88 that was due Attendant Evans.

Your Petitioner further sets forth that as a result of the Company's refusal to pay the above-mentioned $5.88, a formal claim was filed for and in behalf of Attendant Evans under date of April 27, 1948, in which the contentions of the Organization were specifically set forth. However, under date

Rule 2. Rates of Pay lends support to the Company's position in this dispute. Under paragraph (g) of Rule 2, the method of computing daily and hourly rates of pay is set forth. The paragraph does not specify that the daily rate of pay is applied to an employe only when such employe operates part time in regular assignments in months not having 31 days. The Company fails to discover any language in Rule 2 that would permit Management to ignore the provisions of **Rule 5. Crediting Days in Road Service,** which Rule provides that a porter or attendant working part time in regular assignment shall be paid at his daily rate of pay, whether in a 28, 29, 30 or 31-day month.

Rule 3. Basic Month simply sets forth that 240 hours' work, credited to a calendar month as provided in subsequent rules of the Agreement, constitutes a basic month's service and that where a regular assignment is less than 240 hours' work per month, Management shall not deduct from the porter's established monthly wage for the undertime assignment. There is nothing in Rule 3 prohibiting the practice complained of here.

Rule 6. Crediting Hours in Road Service also favors Management's position in this dispute. The second paragraph of Rule 6 definitely conforms to the reasoning employed by the Company in this case. The paragraph relates to regular assignment where the days credited for the last trip in the month extend into the succeeding month, in which case the service hours in the trip are prorated by allowing eight hours' credit for each day credited in the month in which the trip was started and crediting the balance of the hours to the succeeding month. In the example given in Rule 6, a porter in a Chicago-Los Angeles assignment requiring 12 men and carrying hourage credit of 95 hours makes a lapover trip departing June 27 from the home terminal and returning thereto on July 4. Such employe is credited under **Rule 5. Crediting Days in Road Service** with three days in June and nine days in July. Thus, the method of crediting service in regular assignment is consistent with the method employed in crediting work in part-time regular assignment.

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 Attendant Evans was compensated in the manner prescribed by the Agreement or the month of March, 1948. The Rules cited by the Organization as lending support to it fail to sustain its claim that Attendant Evans should have been compensated for service performed in regular assignment in March, 1948, 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 Attendant Evans is without merit and should be denied.

Exhibits not reproduced.

OPINON OF BOARD: Decision in this case is controlled by Award No. 4563.

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 jurisidiction 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.