

Award No. 5493

Docket No. PM-5221

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of A. Jones No. 2, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Chicago Western District.

Because The Pullman Company did, under date of October 12, 1949, deny a claim filed for and in behalf of Porter Jones No. 2 for the sum of \$5.65, which claim was filed because of the violation of certain rules in the contract between The Pullman Company and its porters, attendants, maids, and bus boys represented by the Brotherhood of Sleeping Car Porters.

And further, for Porter A. Jones No. 2 to be paid the sum of \$5.65 as it is contended for by the Organization in its original claim.

EMPLOYEES' STATEMENT OF FACTS: Your Petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is duly authorized to represent all Porters, Attendants, Maids and Bus Boys employed by The Pullman Company as it is provided for under the Railway Labor Act.

Your Petitioner further represents that in such capacity it is duly authorized to represent A. Jones No. 2, who is now, and for a number of years past has been, employed by The Pullman Company as a porter operating out of the Chicago Western District.

Your Petitioner further represents that under date of August 12, 1949, the Organization filed a claim for and in behalf of Porter A. Jones No. 2, with The Pullman Company through District Superintendent C. W. Kelley, in which the Organization maintains that the Company had short-paid Porter Jones the sum of \$5.65 in connection with services rendered by him during the month of June, 1949.

Your Petitioner further represents that the Company denied said claim under date of October 14, 1949, in a communication addressed to the Organization by District Superintendent Kelley.

Your Petitioner further represents that an appeal from the decision of District Superintendent Kelley was made through the regular channels up to and including Mr. J. P. Leach, Assistant Vice President of The Pullman Company and last officer designated by the Management to handle matters of this sort, who did, under date of February 28, 1950, sustain the action taken in this claim by District Superintendent Kelley.

the Organization does not claim that Porter Jones was not paid for the trip of June 26-30 at the correct hourly rate, but asserts that he should have been paid 52:15 hours instead of 46:40 hours for the trip Chicago-Livingston. Inasmuch as Jones did not operate in special service beyond Billings he is not entitled to be paid in the manner claimed.

Paragraph (a) of **Rule 4. Sleep Periods**, which Rule the Organization also claims was violated, provides that where the requirements of the service permit, employees are released from duty for sleep for three (3) hours on overnight runs of twelve (12) hours or less elapsed time, and four (4) hours each night on runs of over twelve (12) hours elapsed time. Apparently the Organization is claiming violation of Rule 4 in that no sleep deduction was made from Jones' time on the night of June 28, at which time he was in Billings on layover. The Company made proper sleep deductions from Porter Jones' time on the trip in question, 4 hours on the night of June 26, 3 hours on the night of June 27, on which latter date Jones claimed loss of sleep of one hour (Exhibit C).

Rule 5. Crediting Days in Road Service relates to the manner in which porter employees working full or part time in regular assignment are paid and involves the crediting of employees on the day service basis. On June 26-30, Jones was not operating in regular service, but was in special and deadhead service, which type of service is credited and paid on the hourly basis. It is, therefore, difficult to understand in what manner the Organization intends that Rule 5 is involved.

Rule 20. Cleaning Interior of Cars provides that employees required to perform interior cleaning of cars at layover points are paid forty (40) cents per cleaning. Inasmuch as this payment for car cleaning performed by Jones in Livingston on June 30, 1949, was not included in the payroll for that period an adjustment in that amount was included in second half of June, 1950, payroll in favor of Jones.

Clearly, the Organization is in error in claiming violation of Rules 2, 4, 5, 6, 14, and 20 in the manner in which the Company paid Jones for the work in question.

CONCLUSION: The Company submits that the manner in which Management credited and paid Jones for the month of June, 1949, with especial reference to the trip of June 26-30, conformed to the provisions of Rules 6, 7, 10, 14, and 23. The Company properly credited and paid Jones for work performed on June 26-30, 29:30 hours for the special service trip, Line Special, Chicago-Billings, 9:10 hours for the deadhead trip, Billings-Livingston, and 8 hours held for service in Livingston as provided in the above-mentioned rules. No rule or rules of the Agreement require the Company to credit and pay a porter employee upon the basis of information furnished an employee on an Assignment to Duty slip as contended by the Organization in this dispute.

The Organization has not shown and cannot show violation of Rules 2, 4, 5, 6, 14, and 20, cited in his letter of claim, or of any other rules of the Agreement.

The Organization's claim is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Porter Jones was issued an Assignment to Duty slip in special service at Chicago, Illinois. Livingston, Montana was given as the destination therein and claimant contends that he should have been paid on special service for the entire trip. As it developed, a layover had occurred at Billings, Montana, and claimant was deadheaded from that point to Livingston and upon that basis so compensated. There was a difference of \$5.65 between the compensation paid and that claimed.

At Billings, claimant and another porter were requested to report to the Pullman office where an Assignment to Duty slip was to have been issued to cover the deadhead trip to Livingston. Said porters declined to go to the

office, stating that they already had an assignment to Livingston and would straighten the matter out upon their return to Chicago.

The Company contends that there is no rule in the Agreement which provides that the destination designated in an Assignment to Duty slip issued to a porter employe may not be changed by an authorized representative of the Pullman Company when operating conditions require or error has been made in the assignment notice. The Organization's position is not too clear, but at one point it argues that the destination shown on the Assignment to Duty slip controls and is the measure of the compensation due; in other words, once made, it is not subject to change.

Rule 59 provides in part, "* * * assignment slips for other employes shall prescribe the time and place required to report for duty." Nothing is said concerning the subject of destination and, while it is shown on the porter's form, there is nothing in the rules requiring it or prohibiting later change or correction.

This is not such a case as confronted us in Docket PC-5441, subject of Award No. 5492 entered this day. There we ruled management's discretionary right to change destinations and annul assignments was limited by a negotiated rule. The Organization before us has not obtained such a restricting rule, hence management's right to use the porters as they did here was unimpaired.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of September, 1951.