

Award No. 6368

Docket No. PM-6377

**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 R. Gilmore, 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 June 6, 1952, through its Vice President and last officer designated by the Management to handle disputes of this character, deny the claim filed by this Organization for and in behalf of R. Gilmore in the Los Angeles, California District for the sum of \$23.11, which the Organization maintains is due and payable to Porter Gilmore under the rules of the Agreement between The Pullman Company and its Porters, Attendants, Maids and Bus Boys, represented by the Brotherhood of Sleeping Car Porters, for services performed by him during the month of March, 1950.

And further, for the claim to be allowed and the above-mentioned sum of money to be paid to Porter R. Gilmore.

EMPLOYES' 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 sets forth that in such capacity it is duly authorized to represent R. Gilmore, 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 Gilmore was assigned to a service classified under the above-mentioned contract as Special Service Tour on Car Poplar Place, leaving Los Angeles, California on March 8, 1950, arriving in Albany, New York on March 12, 1950. On said trip, as per Rule 4 of the above-mentioned contract, there was deducted from the total elapsed time on this particular trip 16 hours which were allowed for sleep. The total elapsed time on said trip was 99 hours and 30 minutes. Sixteen hours was deducted and was verified by the Pullman conductor in charge. However, some fifteen days after Porter Gilmore was paid for the trip, the Management deducted \$16.76 from his pay without any explanation in regard to such deduction. The Organization, subsequently thereto, called upon the Company for an explanation of said deduction, and it developed that the Management took the position that there should have been 32 hours deducted

given every opportunity to withdraw from the extended special tour if he had any objection to going out in a tour movement. The Organization's attempt to give the impression that Gilmore was not given definite accommodations for his own use on the entire trip in that while en route some Pullman representative told Gilmore to prepare an upper berth in the body of the car and informed Gilmore that he would get the passenger to sit somewhere else does not conform to the facts. The record clearly reveals that Gilmore was assigned Section 1 in his own car for his exclusive use. If, as claimed by the Organization, he suffered any loss of sleep on the trip in question, a condition which the Company does not concede existed, such loss was due to his failure or refusal to occupy the accommodations furnished.

Also, in support of its assertion that Gilmore suffered loss of daytime rest on the trip in question, the Organization apparently has relied upon the fact that Los Angeles Conductor C. L. Henninger verified Gilmore's entry on his time sheet to the effect that he had only 16:00 hours' sleep. However, the Company's investigation established that Gilmore received 32:00 hours' rest. The fact should be noted that Gilmore made no entry on his time sheet in the space provided therefor any explanation as to his alleged loss of rest. A copy of Gilmore's time sheet for second half March, 1950, is attached as Exhibit J.

Finally, the Company wishes to point out that in its initial claim, dated November 8, 1951, the Organization alleged that Porter Gilmore was shortpaid \$23.11 (Exhibit B). Subsequent thereto the Company made an investigation and ascertained that through error Gilmore was shortpaid in the amount of \$5.78, which adjustment was made in favor of Porter Gilmore on the second half January, 1952, payroll. However, in its claim to the Board, dated July 1, 1952, the Organization ignored the adjustment of \$5.78 and claimed that Gilmore was shortpaid \$23.11. Clearly, even if the Organization's claim as presented to the Board were valid, the amount owing Gilmore would be \$17.33 ($\$23.11 - \$5.78 = \17.33).

CONCLUSION

The Company submits that Porter Gilmore was properly paid in accordance with the rules of the Agreement, with especial reference to Rule 4. Sleep Periods, for the extended special tour, Los Angeles-New York, reporting time in Los Angeles 10:30 A. M., March 8, 1950, and terminating in Albany, New York, at 5:00 P. M., March 12, 1950. The Organization's claim that the Company did not furnish Gilmore proper accommodations for daytime rest does not conform to the facts. Finally, Award 4864 supports the Company's position in this dispute.

The claim that Porter Gilmore was shortpaid \$23.11 is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Rule 4 (b) 3 provides for deduction of a maximum of eight hours for each 24 hour period of extended special tour service provided the employe is released for sleep and provides for verification of sleep periods by the Pullman conductor or employe in charge.

On the time slip of claimant for the extended tour service involved sleep periods were so verified to the extent the claimant alleges he received. The Carrier alleges that a subsequent investigation revealed that claimant was released for sleep for the full 32 hours deductible under the rule. However, it presented no evidence to sustain that allegation. Where sleep periods are verified as required by the rule, one alleging them to be different than as

verified has the burden of proving such to be a fact. In the absence of such proof, the claim must be sustained.

The sum claimed does not reflect an adjustment made by the Carrier in the amount of \$5.78, so the claim should be allowed for \$17.33 only.

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 Employees involved in this dispute are respectively Carrier and Employees 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

The Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day October, 1953.