

Award No. 7141

Docket No. PM-7187

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of W. V. Murphy, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the Pennsylvania Terminal District.

Because The Pullman Company did, under date of December 8, 1953, deny a claim filed by the Brotherhood of Sleeping Car Porters for and in behalf of W. V. Murphy on November 13, 1953, in which it was contended that The Pullman Company violated the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys employed by The Pullman Company in the United States of America and Canada, represented by the Brotherhood of Sleeping Car Porters Revised, Effective January 1, 1953.

And further, for Porter Murphy to be paid for the time lost as set forth in the above-mentioned 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, and in such capacity it is duly authorized to represent W. V. Murphy, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the Pennsylvania Terminal District.

Your Petitioner further sets forth that Porter Murphy was operating in a regular line, from New York City to Akron, Ohio, and had placed a bid, under the rules of the Agreement, on Line 6581, New York to Greenville, South Carolina. On October 17, 1953, in a telegram of that date, 1:08 P. M., Murphy was advised that he had been awarded the above-mentioned line and to telephone the Signout Office. Immediately after receiving the telegram, Murphy called the Signout Office and advised that he was ready to go out on the line any time, and was told he could not go out until October 21st, reporting at 5:47 P. M. He was further told that he was awarded the line on October 18th, and could not go out until the 21st.

Your Petitioner further represents that because of this situation and because it felt that the Company did not comply with the rules of the Agreement governing this class of employees, of which Murphy is a part, it did,

zation readily admits that the Company advised Porter Murphy the time and date of award was 8:00 A. M., October 18, it is difficult to understand the logic behind the Organization's claim.

As previously noted, awards of 29 other assignments to regular porter runs were made effective at 8:00 A. M., October 18, the same time and date at which the award of Line 6851 was made to Porter Murphy. It is significant to note that the Organization has not made claim in any of the 29 cases that the award date was other than that designated by the Company.

In this dispute, the Organization has relied upon the premise that Porter Murphy was awarded his new assignment on October 17. The Company, however, has shown that Porter Murphy was actually awarded his assignment effective on October 18. Since the Organization's claim is based upon an erroneous premise, it is evident that its claim is wholly without merit.

CONCLUSION

The Company has shown that in full compliance with Rule 40 (a), the applicable rule of the working Agreement, a vacancy in a regular porter run, designated as Line 6851, was bulletined for a period of ten days—from October 7, 1953, until October 17, 1953—and that within five days thereafter, specifically, at 8:00 A. M. on October 18, 1953, the assignment was awarded to Porter W. V. Murphy of the Pennsylvania Terminal District.

The Company has shown also that a telegram was sent to Porter Murphy early on the afternoon of October 17 to put him on notice concerning his new assignment, and that when Murphy called the signout office at Pennsylvania Terminal pursuant to instructions contained in the telegram, he was clearly advised by the signout clerk that the award was being made effective at 8:00 A. M., October 18. This telegram was wrongly construed by the Organization as notice that Murphy was awarded his assignment on October 17.

The Company has shown finally that inasmuch as the Organization's claim in this dispute is based upon an erroneous premise, the claim is without merit. Since the claim is without merit, it 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: The submissions show that a vacancy in a regular porter run designated as Line 6851 was bulletined for bids at 8:00 A. M. on October 7, 1953 in the Pennsylvania Terminal District, the time for bids to expire at 8:00 A. M. on October 17, 1953. Porter Murphy, at the time assigned to another regular line, placed a timely bid for Line 6851.

On October 17, 1953, at 1:37 P. M., Murphy received the following telegram from the Carrier: "AWARDED NEW OPERATION TELEPHONE SIGN OUT OFFICE IMMEDIATELY." According to the Petitioner's statement of facts, Murphy called the signout office and advised that he was ready to go out on his new assignment on the trip scheduled for that day at 5:47 P. M. He was told, however, that he was not awarded the new assignment until October 18th, the next day, and therefore that his first trip on the new assignment would be on October 21 at 5:47 P. M. At 11:00 A. M. on October 18, the Carrier posted a bulletin showing the assignment of Line 6851 to Murphy.

Petitioner contends that under Rule 40 (a) of the Agreement, Murphy was entitled to go out on his new assignment at 5:47 on October 17, and claims pay for time lost by Murphy between 5:47 P. M. on October 17 and 5:47 P. M. on October 21.

Rule 40 (a) provides:

"New runs, each side of a run which has preferred sides, also seasonal runs and vacancies known to be of more than 60 days' duration shall be promptly bulletined for a period of 10 days in the district where they occur. Employees desiring to bid for such runs shall file their applications with the designated official within the prescribed period and assignment shall be made within 5 days thereafter. Employees bidding on more than one bulletined run shall specify in the applications their first choice, second choice, etc.

"The name of each employee assigned shall be immediately posted where the run or vacancy was bulletined.

"An employee who has been assigned to a run shall be placed in it in seniority order after expiration of the layover from his preceding trip except that he shall be privileged to depart before the expiration of the layover from his preceding trip with the understanding that when an employee departs prior to the expiration of the layover from his preceding trip, the Company shall pay him straight time only for such 'double' and shall not be required to pay at a punitive rate for any punitive time which may result from such 'double'. The hours accumulated on such doubles shall not be included in the total hours for the month.

"For the purpose of this Rule extra employees shall not be considered as having a layover. A regularly-assigned employee who is awarded another run shall have no rights in the run from which he bid."

Petitioner takes the position that he was assigned to Line 6851 on October 17, at the time he received the telegram; that he was entitled to go out at 5:47 that day under the third paragraph of Rule 40 (a); and that Carrier violated the rule when it refused to permit him to do so.

Carrier contends that it has the right to choose the time of assignment subject only to the limitations of the first paragraph of Rule 40 (a); that it complied with the rule in making Murphy's assignment effective at 8:00 A. M., October 18; that it did not intend to make the assignment by the telegram of October 17; and that since the assignment was made on the eighteenth, Murphy had no right under the rule to go out on the trip on the seventeenth.

The only provision in the rule as to when an assignment to a vacancy shall be made is that it must be made within five days after the close of the bidding period. The only provision as to notification of an employee who is so assigned is that the name of the employee is to be immediately posted where the vacancy was bulletined. There is no evidence in the record of any special custom or practice either as to time of assignment or notification.

The facts show that it was Carrier's intention to make this assignment as of 8:00 A. M. on October 18, not by means of the telegram sent to Murphy on the seventeenth. This is borne out by the fact that the telegram required him to call the signout office immediately; and when he called he was told at once that the assignment was not effective until the eighteenth. It is further borne out by the fact that notice of the assignment was not posted until 11:00 A. M. on the eighteenth. In the absence of any limiting language in the rule, the intention of the Carrier must govern under these circumstances.

In view of these facts, we conclude that Murphy was assigned to Line 6851 on October 18, 1953 and that the Carrier was within the rule in making the assignment as of that date. Since the assignment was not made until the eighteenth, Murphy had no right under the agreement to go out on the new run on the seventeenth, and there was no rule violation by the Carrier in refusing to permit him to do so.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of September, 1955.