Award No. 7142
Docket No. PM-7041

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 F. L. Henderson, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the District of San Francisco, California.

Because The Pullman Company did, under date of September 2, 1953, through Superintendent H. C. Lincoln, deny a claim filed for and in behalf of Porter F. L. Henderson, in which claim it was contended that The Pullman Company violated the rules of the Agreement governing the wages and working conditions of the group of employes of which Porter Henderson is a part, and in which claim the Organization contended that Porter Henderson should have been given an assignment that was given to another employe in the San Francisco District because this employe, who was a regularly assigned employe, had been put on the extra list in a position contrary to the regulations of the abovementioned agreement.

And further, for the claim that has been denied by the Company in reference to Porter Henderson to be sustained, and for Porter Henderson to be compensated for the amount of money lost as a result of the violation of the 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 under an Agreement between The Pullman Company and its porters, maids, attendants and bus boys in the United States of America and Canada, represented by the Brotherhood of Sleeping Car Porters, as it is provided for under the Railway Labor Act, and in such capacity it is duly authorized to represent F. L. Henderson who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of San Francisco, California.

Your Petitioner further sets forth that Porter J. I. Van of the San Francisco District, a regularly assigned porter operating on a train known as the LARK between Los Angeles and San Francisco, was due to report for his regular assignment at 4:30 P. M., on August 13, 1953, but due to his assignment being blanked (temporarily discontinued due to causes other than acts of God) Porter Van did not go out on this particular assignment; but was assigned to another car leaving the same day on the LARK, with reporting time at 4:45 P. M.

forth in full in Exhibit H, attached to this submission. However, a few words concerning Rule 43, paragraph (a), which contains reference to a rule upon which the Organization apparently relies, Rule 46, are appropriate.

Paragraph (a) of Rule 43 is concerned with regular assignments temporarily discontinued due to "acts of God," such as storms, hurricanes, earthquakes, floods and the like. Paragraph (a) provides that employes affected thereby "may be assigned as extra employes in accordance with Rule 46 to service which will make them available for their regular assignment when resumed." In other words, employes coming under the provisions of Rule 43 (a) may, when their regular assignments are temporarily discontinued, be assigned as extra porters "first-in, first-out" in accordance with expiration of layover, as provided in Rule 46. Further, paragraph (a), in contrast to paragraph (b), does not require The Pullman Company to keep the employes thereunder financially "whole."

In its letter of claim dated August 14, 1953 (Exhibit B), the Organization alleges that "Porter Henderson was due an assignment before Porter Van, since Porter Henderson was 'in' since August 6th and Porter Van didn't come in until August 12, 1953." Thus, in setting forth its position, the Organization apparently maintains that the "first-in, first-out" provisions of Rule 46, referred to above, are applicable to the facts of the instant case. The fallacy in the Organization's position is that it fails to recognize, or will not recognize, the distinction between the manner in which an employe is assigned under Rule 43, paragraph (a), and the manner in which an employe is assigned under Rule 43, paragraph (b). The organization is trying to misapply the procedure of paragraph (a) to a set of facts governed by paragraph (b).

RULE 46, Operation of Extra Employes Out of Home Station, which is contained in the working Agreement under the general heading **EXTRA EMPLOYES,** is as the title indicates, concerned with the manner in which assignments are given to extra employes. By specific reference to Rule 46 appearing in Rule 43, paragraph (a), certain regular employes are also assigned in accordance with Rule 46. However, regularly assigned porters whose runs are temporarily discontinued due to causes other than "acts of God" are subject to **any** assignment as provided in Rule 43, paragraph (b), and the procedure of Rule 46 does not apply to them. In the instant case, Porter Van was a regularly assigned porter whose run was temporarily discontinued due to causes other than "'acts of God." Consequently, Rule 46 did not govern the manner in which Porter Van was assigned, and the rule is not applicable to this dispute.

CONCLUSION

In this ex parte submission, The Pullman Company has shown that Rule 43, paragraph (b), is the controlling rule, and that the Company fully complied with the rule in giving Porter Van the assignment he received on August 13, 1953. Further, the Company has shown that neither Rule 46 nor any other provision of the working Agreement is applicable to this dispute.

Since Porter Van was entitled to the assignment he received, August 13, 1953, Porter Henderson was not entitled to that assignment. Therefore, the claim in behalf of Porter Henderson 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: This is a claim for compensation lost by Porter Henderson as the result of Porter Van being assigned to a certain

car on August 13, 1953, which assignment allegedly should have been given to Porter Henderson under Rules 43 and 46 of the Agreement.

The facts are not disputed. Porter Van's regular assignment was blanked on the morning of August 13th, at which time he was at his home terminal with layover expiring at 4:30 P. M. that day. He was placed on the extra list and during the 12 noon to 2:00 P. M. signout period was awarded an extra assignment, reporting at 4:45 P. M., also on the 13th.

On the 13th, during the signout period, Porter Henderson, who had arrived at the home terminal on August 6, six days prior to Porter Van, was eligible and ready for an assignment at the time the extra assignment was awarded to Porter Van.

Rule 43 (b) provides:

> "Where a regular assignment has been temporarily discontinued or interrupted due to causes other than 'acts of God,' the employes affected, when at or returned to their home station, shall be placed on the extra list after expiration of layover and as extra employes shall be subject to any assignment or assignments which will make them available for their next regular trip, if possible, or otherwise within a reasonable time. They shall not receive less credit than they would have earned on their regular runs had such runs not been temporarily discontinued, provided they do not refuse an assignment."

Claimant contends that under Rule 43 (b), Van could not have been placed properly on the extra list until after his layover had expired at 4:30 P. M., and therefore was not eligible for assignment during the signout period from 12 noon to 2:00 P. M., prior to such expiration. Claimant further contends that even if Van could have been placed on the extra list prior to signout time, Porter Henderson was entitled to be assigned ahead of him under the first-in first-out provisions of Rule 46.

Carrier contends that Van was eligible for assignment during the sign-out period so long as the reporting time of the assignment awarded to him was after the expiration of his layover; and that once on the extra list, Van was subject to "any assignment" under Rule 43 (b), Rule 46 having no application to this situation.

Although the bulk of the arguments in both submissions and briefs was devoted to the issue raised in the second contention outlined above, we feel that our decision on the first contention is dispositive of the case. Rule 43 (b) states in the clearest language that the employe "shall be placed on the extra list after expiration of layover . . ." These words are explicit and unambiguous and unless some overriding practice or agreement is shown to exist, should be given their plain meaning. Rule 43 (b) became effective on January 1, 1953. Carrier shows that under date of May 1, 1953, it prepared a document composed of questions and answers relating to the interpretation of various rules of the January 1 agreement, including the following:

> **"Question**
>
> 2) How shall the layover be determined of a regularly assigned employe whose assignment is temporarily discontinued under paragraph (b) and when shall he be considered for an assignment?
>
> **Answer**
>
> If he is at his home station at the time his line is temporarily discontinued, the layover shown in the operating schedule will be applicable. He shall be considered during the sign-out period of sign-out day during which his layover will expire for an assignment

which has a reporting time after expiration of his layover. An employe coming under paragraph (b) can be given any assignment selected by Management as designated in this rule."

This document was distributed in June of 1953 to Carrier's supervisory personnel and a copy was also sent to the Brotherhood. The Carrier represents that this interpretation has been followed since that time.

Claimant denies that it ever agreed to this interpretation and shows that by letter of January 11, 1954, it raised a question about the rule as applied to a porter in May, 1953. A reply was received from the Carrier which indicated that as of May 23, 1953, the rule was being interpreted as the Claimant contends it should, and that it was at some time after that date that the interpretation was changed by the Carrier.

This evidence does not establish the existence of a practice or agreement which changes the plain meaning of Rule 43 (b). Van's layover expired at 4:30 P. M. on August 13th, and according to the rule he could not be placed on the extra list until after that time. Therefore the Carrier violated the agreement when it gave him an assignment during the signout period when he was not on the list and when there were eligible extra men available at that time.

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 violated to the extent indicated in Opinion.

AWARD

Claim sustained in conformity with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of October, 1955.