

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: The Southern Pacific Company has improperly applied paragraph (d) of the Memorandum Agreement of June 25, 1937; also Rule 13 (b) of the Rules Agreement.

Claim is that Carrier correctly apply the Agreement in the future, and that all employes adversely affected will be reimbursed for all monetary loss; also, if any other rights have been impaired by Carrier's actions, such rights will be returned to employes.

EMPLOYEES' STATEMENT OF FACTS: The Carrier did not fill assignment of a temporary nature when vacated by Business Car Porter, by using extra Red Caps. The Carrier has refused to make these assignments since April 29, 1951. Notwithstanding the fact that it has been an accepted practice for nearly fifteen years.

This dispute has been handled in accordance with Rule 19 of the Agreement dated February 16, 1940 and the Railway Labor Act, amended.

We aver that this case is properly before this Board.

POSITION OF EMPLOYEES: The employes contend that Carrier violated Paragraph (d) of the agreement found on page 17, which reads in part, as follows:

" . . . When such an assignment is temporarily vacated by Business Car Porters, an extra Red Cap Station Porter may be used in filling same."

Employes contend that for fifteen years Carrier had applied the above Rule, and should have done so since April 29, 1951 until July 1952. That failure to do so has caused the individuals listed in Exhibit A to lose money as indicated.

We therefore request your Honorable Board to sustain our claim in behalf of the employes listed in Exhibit A.

CARRIER'S STATEMENT OF FACTS: 1. There is in evidence an agreement between the carrier and its Red Cap Station Porters, represented by United Transport Service Employees of America, bearing effective date of February 16, 1940 (hereinafter referred to as the current agreement), copy of which is on file with the Board and is hereby made a part of this submission.

"(2) Should he voluntarily relinquish his position as Chair Car Porter, or Business Car Porter, to return to Red Cap Station Porter service, he shall go to the foot of the extra list, from which he may use his accumulated seniority to bid on vacancies that may subsequently develop."

Section (b) of Rule 13 is neither applicable nor involved. It obviously has nothing whatever to do with the question of whether or not it is mandatory to fill Red Cap Station Porter assignments allotted to Business Car Porters in accordance with Section (d) of Memorandum of Agreement dated June 25, 1937, with extra Red Cap Station Porters when they are temporarily vacated.

The petitioner is simply attempting to secure through an award of this Division a new agreement provision over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, the carrier respectfully submits that within the meaning of the Railway Labor Act, the instant claim involves request for change in agreement, which is beyond the purview of this Board. It is a well established principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists. To accept petitioner's position in this docket would be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and requests that said claim, if not dismissed, be denied.

All data herein have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Based upon all the facts and circumstances of this dispute, the Board is not disposed to disturb the action of the Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 action of the Carrier will not be disturbed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1956.