Award No. 10381
Docket No. PM-10733

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILROAD COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of J. W. Bailey, who is now, and for some years past has been, employed by the Soo Line Railroad as a sleeping car porter operating out of Minneapolis, Minnesota.

Because the Soo Line Railroad did under date of April 15, 1958, through Superintendent J. Christensen, and finally under date of May 5, 1958, through W. G. Anderson, Manager Personnel and Safety, deny the claim filed by the Organization for and in behalf of J. W. Bailey and other porters employed by the Soo Line Railroad Company, in which claim it was contended that Porter Bailey should be paid for 22 hours and 45 minutes for a trip he was not allowed to make on his regular assignment between St. Paul, Minnesota and Winnepeg, Canada on Trains 9 and 10 during the month of January, 1958.

And further, for Porter Bailey to be paid for the above-mentioned hours as contended for by the Organization as set forth in the original claim.

EMPLOYES' STATEMENT OF FACTS: Your Petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is duly authorized to represent all employes of the Soo Line Railroad classified as sleeping car porters.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent J. W. Bailey, who is now, and for some years past has been, employed by the Soo Line Railroad as a sleeping car porter operating out of Minneapolis, Minnesota.

Your Petitioner further sets forth that under date of April 3, 1958, it filed a claim with Superintendent J. Chirstensen of the Soo Line Railroad for and in behalf of Porter Bailey in which it contended that Porter Bailey should be paid for 22 hours and 45 minutes for a trip he should have been allowed to make in his regular assignment on Trains 9 and 10, St. Paul to Winnepeg and return, January 27, 1958. The claim further sets forth that Porter Bailey was a regularly assigned employe assigned to a monthly assignment and that the Company arbitrarily took him off the assignment and as a result thereof he missed the trip involving the number of hours above referred to.

Not only are the employes' claims unsupported by the rules, but their arguments that the Carriers **must** work the men overtime run contrary to the spirit and intent of the overtime rules. Penalty rate payments have always been argued for by labor not as a right of the employes whereby they might increase their earnings but as a deterrent against employers requiring men to work more than their proscribed hours. To follow the course advocated by the organization would also deprive extra employes of work opportunities which they have traditionally enjoyed on this property.

In summary, Carrier contends that the manner in which claimants were relieved is not violative of their rights under the applicable agreement, the practice is one of long standing and without objection by the employes, the claimants were allowed to work in excess of the guaranteed basic month of 205 hours, they were paid their established monthly rate and in addition received overtime payments for service in excess of 205 hours.

In conclusion, Carrier contends that the claims are not supported by the rules and are entirely without merit. Carrier therefore respectfully requests that they be denied.

All data submitted in support of the Carrier's position has been submitted to the employes' representatives and made a part of the particular question in dispute.

OPINION OF BOARD: The claimant is a sleeping car porter assigned to trains running between St. Paul, Minnesota and Winnepeg. His regular assignment consists of ten trips per month in a 30 days month. During the month of January 1958 it became apparent that if claimant worked without relief he would accumulate substantial overtime. In order to cut down on the payment of overtime claimant was relieved by the Carrier for one round trip.

The organization asserts that inasmuch as claimant is assigned to and is working a regular monthly assignment he is entitled to work every trip of such assignment even if overtime pay is involved.

In Award No. 621 this Board held:

> "In view taken by the Board the organization's claim is not dependable upon whether the time time involved may be classified as held for service under Rule 9. The Board disagrees with the carrier's contention that it is at liberty to blank any part of a regular assignment at any time without bulletining and pay only for the remainder. The provision for proportionate payment of less than a round trip is obviously intended to cover failure on the part of the conductor to perform. To subscribe to the carrier's contention would be entirely destructive of the whole theory of the bulletin rules. They contemplate the advertisement of regular assignments. When such an assignment is bid for by a conductor it is conceivable that he may be choosing between it and another. If the carrier could without re-bulletining, from day to day, from circumstances or whim, chop up the assignment so that its actual time and earnings are quite indefinite, the bulletin rules would mean nothing. There is an implied guarantee of the work advertised, the men being ready and willing to perform, until such time as the assignment may be annulled by re-bulletining."

Under this holding of the Board the Claimant would be entitled to pay

for the regularly scheduled trips for the month involved. However, in the instant case on this particular railroad it has been the practice since 1938, some twenty-four years, to permit the carrier to hold out a porter from a regularly scheduled trip to prevent overtime. As this Board held in Award No. 8538:

> "When a collective bargaining agreement is consumated and existing practices are not abrogated or changed by its terms, these existing practices are just as valid and enforceable as if authorized by the agreement itself, and particularly where as here an existing practice is sought to be changed."

See also Award No. 5747 and many other decisions of this Board for the same holdings.

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

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1962.