Award No. 10555

Docket No. PM-11206

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of L. I. Adams, J. W. Beevers, E. Carter, A. L. Duplessis, H. U. Gaudet, Robert Gordon, A. Green, S. Griffin, C. L. Joseph, I. Lawson, J. T. Lowe, J. G. Roane, E. Rousell, W. J. Smith, J. Williams #5, and R. B. Williams, who are now, and for some years past have been, employed by The Pullman Company as porters operating out of the District of New Orleans, Louisiana.

Because The Pullman Company did, under date of June 10, 1957, through Superintendent E. J. O'Neill, deny the claims filed by the Brotherhood of Sleeping Car Porters for and in behalf of the above-mentioned employes, under date of May 29, 1957, in which claims it was set forth that the above named employes should be additionally paid for the hours involved at one-half of the regular rate as set forth in each of said claims, which denial was in violation of the Agreement between The Pullman Company and Porters, Attendants, Maids and Bus Boys employed by The Pullman Company, then and now in effect; said violated rules have been specifically set forth in the claims filed for each of the above named employes.

And further, for each of the above-mentioned employes to be additionally paid for the hours involved at one-half of the regular rate as required by Rule 15 of the above-mentioned Agreement.

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 Pullman Company classified as porters, attendants, maids, and bus boys. And in such capacity, it is duly authorized to represent L. L. Adams, J. W. Beevers, E. Carter, et al, who are now and for some years have been employed by The Pullman Company as porters operating out of the district of New Orleans, Louisiana.

Your Petitioner further sets forth that L. L. Adams, J. W. Beevers, E. Carter, A. L. Duplessis, H. U. Gaudet, Robert Gordon, A. Green, Samuel Griffin, C. L. Joseph, I. Lawson, J. T. Lowe, J. G. Roane, E. Rousell, W. J. Smith, J. Williams #5, and R. B. Williams were employes of The Pullman

Company and the Brotherhood of Sleeping Car Porters the Company issued a Question and Answer Statement setting forth the interpretation of certain rules of the Agreement, with specific reference to **Rule 15. Additional Pay When Used On Layover or Relief Days.** Question and Answer 1 of that Question and Answer Statement sets forth that when a regularly-assigned employe performs station duty on his layover or relief day he shall be paid as station duty in accordance with Rule 8 (b). Question and Answer 3 of that Statement shows that the term "irregular service" means extra road service, not service performed at terminals. A copy of that part of the Question and Answer Statement which pertains to **Rule 15. Additional Pay When Used On Layover or Relief Days** is attached as Exhibit J.

CONCLUSION

In this ex parte submission the Company has shown that the employes involved in this dispute performed station duty work during the period they were assigned to cars parked in the New Orleans Union Passenger Terminal Station for hotel use during the 1957 Mardi Gras Festival. Also, the Company has shown that the porters were properly paid for the work in question under the provisions of Rule 8 (b).

The Organization's claim 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: During the 1957 Mardi Gras Festival at New Orleans, La. (March 2-7) The Pullman Company leased ten cars to the Illinois Central Railroad and one to the Louisville and Nashville Railroad. These cars, parked at Union Passenger Terminal Station, were used for hotel purposes. The Company assigned Porters to the cars in 12-hour shifts. Their duties included: Assisting passengers on and off, making and putting away beds, shining shoes, sweeping, mopping and cleaning the cars, adjusting temperature, guarding equipment and occupants personal property, and otherwise caring for occupants' needs. Each Porter worked alone and was responsible for the work to be performed in his assigned car.

Among those Porters receiving assignments during this period were sixteen men who were in layover status from their regular road service assignments. (For example, Porter L. L. Adams' regular assignment in Line 2656 called for layover in New Orleans from arrival on March 2 to 4:30 P. M. on March 7. He was put on hotel service for 21½ hours: 9:30 P. M. on March 2 to 7:00 A. M. on March 3, 7:00 A. M. to 7:00 P. M. on March 5.)

Adams and his fifteen Co-claimants were paid at the straight-time rate for performing the service described above. They claim time and one-half.

According to Management, these men performed "Station Duty" as defined in Rule 8 and, therefore, were properly paid in accordance with paragraph (b) of that rule:

> "When a regulary assigned employe is required to perform station duty or when called and reporting for road service and not used, such time shall be credited on the hourly basis and paid for

in addition to all other earnings for the month, with a minimum credit of 6:50 hours for each call."

The Brotherhood, on the other hand, believes these Porters performed "irregular service" and should have been compensated in accordance with paragraph (1) of Rule 15 (Additional Pay When Used On Layover or Relief Days"):

> "A regularly-assigned employe who performs service on his specified layover or relief days in his own or another regular assignment shall be paid for the days doubled on the day-service basis as a part of the scheduled assignment and, additionally, shall be paid for the hours credited on the double at half-time rate. Service performed by a regularly-assigned employe on his specified layover or relief days in irregular service shall be paid for on the hourly basis at the rate of time and one-half."

The last sentence of 15 (I), according to The Brotherhood, provides a guarantee that **any service** performed by a regularly assigned Porter on his assigned layover or rest days will be compensated at time and one-half. Since the Claimants here did perform some service on the days in question, they are entitled to the premium pay.

It is true, of course, that this sentence opens with the words "Service performed." But there is a qualification. For purposes of this discussion the sentence may be read: "Service performed . . . in irregular service shall be paid for . . . at . . . time and one-half." In other words, the parties intended this sentence to apply to "irregular service" — not **any** service. Were the Brotherhoods interpretation to be accepted, the phrase "irregular service" could be omitted entirely without changing the meaning of the sentence. But it seems doubtful whether this phrase should be considered as completely extraneous and meaningless.

The Brotherhood affirms, in effect, that any service performed by a regular Porter on his layover or rest days constitutes irregular service. In other words, for the regular Porter there are only two kinds of service: regular and irregular. Moreover, it notes, Rule 15 applies only to regular men and only regular men have assigned layover days.

On the other hand, Management points out that Rule 15 was not written for Porters alone; it covers all "regularly assigned employes". The Company believes that Rule 15's "irregular service" refers to extra **road** service, including extra-in-line service, special service, extended special tour and deadhead service. It notes, for example, that the first sentence of this rule refers to a regular employe being used on the layover or relief days in his own or another regular assignment — i.e. a road service assignment. Therefore, Management contends, irregular service in the second sentence must also refer to some type of road service.

Unfortunately this key term, "irregular service", is not defined in the Agreement. Reference to other clauses, moreover, provides no clarification of the parties' intent. While there is some merit in the Brotherhood's contentions, there appears to be equal merit on the other side. Under the circumstances, the Petitioner's claim cannot be sustained at this point.

What of Rule 8? Interestingly, 8 (b) also covers "regularly assigned employes" and, therefore, might be interpreted to cover the regularly assigned

Porters who are Claimants here. This Rule provides that straight-time rates shall be paid for "station duty" which is defined, in Question and Answer 1, as

> ". . . any work performed by an employe at terminals where Pullman offices are located, other than required of an employe assigned to road service, but it may include assisting such employe in preparatory work, including receiving."

The only limitation on "any work performed . . . at terminals . . ." is work "required of an employe assigned to road service." Management believes the purpose of this provision is to assure that an employe on station duty cannot usurp the work of a road service employe. On the other hand, the Brotherhood maintains, in effect, that this proviso excludes work of the kind or type required of men in road service, which would include the work performed by the Claimants here. The Brotherhood believes that Station Duty, in this industry, is designed to protect the job in the event some emergency arises which prevents an assigned man from getting to work.

Again, there seems to be merit in both contentions and, although the Agreement does define Station Duty, there is sufficient ambiguity to prevent us, in the absence of further evidence, from reaching a definite conclusion as to its applicability to hotel service.

Past practice, unfortunately, offers little guidance. In 1950 several Porters were assigned to cars at Fort Worth which were used for hotel purposes and their "Assignment to Duty" Forms noted "Station Duty." Additionally, in every year since 1953 Porters have been assigned to hotel cars and paid at straight-time rates for "Station Duty", according to the Company. While this certainly indicates a consistent approach by Management, there is no evidence to show whether the assigned men were Extra or Regular employes. Were they Extras, there might have been small incentive to submit complaints since no wage differential was involved. (That also may explain why no complaint was filed for Extra men who were assigned to hotel cars at the same time as the Claimants in the case at hand.) The practice of labeling hotel work as "Station Duty", therefore, cannot be deemed controlling in the absence of additional information regarding the men to whom the work was assigned.

In sum, it is our conclusion that the Agreement is ambiguous and unclear, and past practice inconclusive. While there are persuasive arguments in support of The Brotherhood's contentions there are equally persuasive arguments on Management's side. Under the circumstances, and since The Brotherhood has not shown that its position is clearly correct, the claim must be denied.

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 repectively 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 evidence fails to demonstrate that the Agreement was violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1962.