Award No. 11218
Docket No. PM-12199

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE NEW YORK CENTRAL SYSTEM

STATEMENT OF CLAIM: * * * for and in behalf of W. T. Threadgill, who is now, and for some time past has been, employed by the New York Central System as a sleeping car porter operating out of Chicago, Illinois.

Because the New York Central System, did, through J. P. Dowey, Superintendent, Dining and Sleeping Car Service, under date of July 18, 1960, deny the claim filed for and in behalf of Mr. Threadgill, in which it was set forth that Management had violated certain rules of the Agreement governing the class of employes of which Mr. Threadgill is a part in that it denied Mr. Threadgill the right to exercise his seniority under the rules of the Agreement set forth in said claim, causing him to lose approximately five days pay which he would have earned had he not been denied the right to exercise his seniority.

And further, for the New York Central System to be directed to sustain the claim and to reimburse Mr. Threadgill for the pay loss which resulted from the denial of his rights under the rules 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 employes of the New York Central System who are classified as sleeping car porters and sleeping-lounge car attendants as provided for under the Railway Labor Act.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent W. T. Threadgill, who is now, and for some time past has been, employed by the New York Central System as a sleeping car porter operating out of Chicago, Illinois.

Your Petitioner further sets forth that on July 11, 1960, Mr. Threadgill lost his regular assignment on which he was working through no fault of his own, and as provided for under the rules of the Agreement now in effect governing the sleeping car porters and the sleeping-lounge car attendants, he made application to bump in on Line 7175, Chicago to Boston, as of July 11, 1960. Mr. Threadgill was advised by the local official of the New York Central System in Chicago that he could not exercise his seniority rights and bump into an

due to "Acts of God", to be assigned to the extra list only "after expiration of layover." Paragraph (b) of this rule, having to do with cases where a regular assignment is discontinued due to cases other than "Acts of God" provides that the regular employe affected will be subject to other assignments "having a reporting time after expiration of layover."

Entirely aside from any merits to the dispute over the meaning of Rule 26, the employes are inaccurate in their claim that Carrier's refusal to permit Porter Threadgill to exercise displacement rights prior to the expiration of his layover period July 12 caused him to lose approximately five days pay. Threadgill was offered the opportunity to work from the extra list after expiration of his layover July 12 until such time as he could displace into Line 7175. He was also informed that he could displace another employe junior to him in Line 7175 on July 15 or July 16. He chose to accept none of these alternatives but elected to wait until July 17 when the employe whom he had sought to displace July 12 was next due out in Line 7175.

The Board in many awards has recognized that an employe who loses time of his own volition must suffer the consequences of his own conduct. Excerpts from a few such late awards follow.

First Division Award No. 19233, with Referee Munro Roberts, Jr.:

> "The record in this case shows that claimant could have avoided any loss in earnings had he chosen to do so. It also shows there is no rule on which to base a sustaining award. Therefore the claim must be denied."

First Division Award No. 19163, with Referee John F. Sembower:

> "* * * It is this circumstance which sets the instant case apart from this Division's sustaining Awards 5683, 5684, and 11218, upon which claimants rely so heavily, and brings it instead squarely within our denial Awards 4655, 10512, 16216, and 18312, the last-named being decided without a Referee and on grounds that the claimants having failed to exercise rights which would have effectively prevented lost earnings, their claims had to be denied."

CONCLUSION: Action of the Carrier in refusing to permit claimant to displace into Line 7175 prior to the expiration of his layover was in strict conformity with Rule 26. Accordingly, claim of the employes is without merit and should be denied.

All the facts and arguments presented were made known to the employes during handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned as sleeping car porter in Line 181 operating between Chicago and Boston. On July 11, 1960 Senior Porter Martin filed written notice that he desired to displace Claimant in Line 181 effective July 12, 1960. Carrier notified Claimant of his displacement, and at 4:05 P. M. on July 11, 1960 Claimant filed written notice of his desire to displace Junior Porter Clark in Line 7175 effective July 12, 1960, the reporting time for the assignment being 11:30 A. M. Carrier advised Claimant that since his layover time from Line 181 did not expire until 5:50 P.M. on July 12, 1960, he could not exercise displacement rights until that time.

Petitioner contends that the case is governed by Rule 26(a) under which Claimant was entitled to displace Clark in Line 7175 on July 12, 1960 although his layover time from his previous assignment has not expired.

Carrier asserts that the claim is controlled by Rule 26(b) under which it says Claimant could not displace prior to the expiration of layover from his previous trip.

Rule 26(a) says: "An employe who loses his run through no fault of his own shall have the right, subject to Rule 27, to displace any regularly assigned employe junior to him. Written notice of such displacement must be made at the designated home terminal at least three hours prior to the reporting time of the run into which displacement is to be made."

Rule 26(b) provides: "The right of a displaced employe to apply for another assignment must be exercised within 20 days (480 hours) from the time and date of displacement (expiration of layover)." (The remainder of the rule deals with matters not pertinent to this case.)

Here Claimant clearly complied with the provisions of Rule 26(a). He lost his run through no fault of his own and he gave the proper notice within the time specified. The only question at issue, therefore, is whether Rule 26(b) says that he can make application and exercise his rights only during the 20 day period following expiration of layover. We hold that it does not. When 26(b) is read in conjunction with 26(a) we think it means that the time for exercising displacement rights ends 20 days after expiration of layover. If the employe has not acted by that time he loses his displacement rights. It says nothing about displacement prior to the expiration of layover time.

Under Carrier's theory Claimant could not even be permitted to make application for the new job until expiration of his layover time. Yet it appears to have been the accepted practice for employes to make such applications immediately upon notice of displacement by a senior employe. Here Carrier not only advised Claimant that he had been displaced but accepted his notice displacing Clark. For all practical purposes he had exercised his right to apply for the new assignment and we find nothing in the Agreement requiring him to wait until the end of his layover time before entering upon the new assignment.

If Carrier wishes to delay displacement until the expiration of layover time, it will have to secure such a provision at the bargaining table.

For the reasons expressed, we conclude that Carrier violated Rule 26 when it denied Claimant the right to displace Clark on July 12, 1960.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1963.

DISSENT TO AWARD NO. 11218, DOCKET NO. PM-12199

Award 11218 is based upon the erroneous premise that "within" a specified time period includes time outside and in advance thereof. Obviously, the Award is in error in construing that Rule 26 (b) "says nothing about displacement prior to the expiration of layover time" when that provision is specific in providing that application for another assignment "must be exercised within 20 days (480 hours) from the time and date of displacement (expiration of layover)." This can only mean "inside the limits" of the 20-day period.

In Award 11234, adopted this same date and involving the same parties, agreement, rules and issue as in the instant case, we denied a similar claim, holding as follows:

> "The parenthetical phrase in the above rule briefly illustrates the intention of the parties to this Agreement. The intent is that the application for another assignment must be exercised within 20 days of the expiration of the latyover."

In the insant case Petitioner itself admitted at one place in the record, as follows, concerning the intent of Rule 26 (b):

> "This rule simply indicates that he must exercise his seniority within 20 days after expiration of layover."

At another place in the record, Petitioner reiterated as follows:

> "As the rule states, his rights must be exercised within 20 days (480 hours) after expiration of layover." (Emphasis ours).

The rule providing a specific 20-day period within which displacement rights must be exercised, and the Carrier's being in agreement with Petitioner's admissions as aforesaid in that such rights must be exercised "within" the 20-day period "after expiration of layover", it is absurd to construe that the rule permits of an actual displacement prior to expiration of layover time and before the 20-day period commences.

The clear and unambiguous language of Rule 26 (b), as well as Petitioner's admissions and Award 11234, show Award 11218 to be in error and we dissent.

/s/ W. H. Castle
/s/ P. C. Carter
/s/ R. A. Carroll
/s/ D. S. Dugan
/s/ T. F. Strunck