Award No. 11234
Docket No. PM-12732

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: * * * for and in behalf of W. T. Threadgill, who is now, and 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 Mr. J. P. Dowey, Superintendent, Dining and Sleeping Car Service, New York Central Service, under date of January 2, 1961, 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 was 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 four days pay, which he would have earned had he not been denied the right to exercise his seniority as set forth in said claim.

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 classified as sleeping car porters, and 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.

The record will show that Mr. Threadgill was operating in Line 181, Train 358, Chicago to Buffalo on November 26, 1960. Mr. Threadgill was removed from his assignment because an older employe in exercising his seniority replaced Mr. Threadgill. Therefore, Mr. Threadgill lost this run through no fault of his own.

Your Petitioner further sets forth that as is provided for under the rules of the Agreement governing the class of employes of which Mr. Threadgill

before the expiration of the layover from the preceding trip. No such exception, however, was made with respect to employes displacing under Rule 26.

The principle that an employe may not accept a new assignment until expiration of the layover attaching to the last trip made in the assignment being relinquished is also included in Rule 22, reproduced in full in Carrier's Exhibit A, Sheet 1. Paragraph (b) of Rule 22 reads as follows:

> "(b) An employe relinquishing his assignment shall be considered an extra employe at the expiration of the specified layover attaching to the last trip made in the assignment being relinquished."

The same principle is also adhered to in Rule 24 which appears in full in Carrier's Exhibit A, Sheet 2. It will be noted that paragraph (a) permits regular employes whose assignment is temporarily discontinued or not run 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 employes affected will be subject to other assignments "having a reporting time after expiration of layover".

CONCLUSION

Action of the Carrier in refusing to permit claimant to displace into Line 181 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 herein presented were made known to the employes during handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant prior to filing this claim was assigned to Carrier's Line 7175 on November 25, 1960, an Employe, senior to the Claimant, filed a written notice that he was displacing Claimant in line 7175, effective November 28, 1960, the date Claimant was next due out.

Claimant upon being informed of the senior Employe's action announced his desire to displace an Employe junior to him into line 181, the reporting time which was 5:20 P. M. The Claimant wished to displace on November 27th.

The Carrier informed him that his displacement would not become effective until 11:50 A. M. November 28, 1960, the expiration of his layover. Thus, he would not be able to displace into line 181 until December 1, 1960 when the Employe junior to the Claimant was next out. The Claimant presents this claim for loss of four days.

The pertinent rule involved is as follows:

> "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), except that when displaced while absent in service or absent on account of illness, suspension, leave of absence or vacation, the 20 days (480 hours) shall date from the time and date the employe returns to his home terminal from service or reports for duty at his home terminal following illness, suspension, leave of absence or vacation."

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 layover.

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

Claim denied.

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.

LABOR MEMBER'S DISSENT TO AWARD 11234 DOCKET PM-12732

Here we have an Award doing precisely what has many times been held NOT to be the function of the Board, i.e. "adding to or amending the rule."

Extreme credence is given a parenthetical phrase in an attempt to express an intent.

As pointed out to the majority all that the parenthetical phrase does is designate the starting time of the twenty-day limitation of the rule, nothing more, and the majority apparently admits it by stating:

> "The intent is that the application for another assignment must be exercised within 20 days of the expiration of the layover." (Emphasis ours.)

This is true and nothing more. It is incorrect to read into the Agreement a prohibition against exercising seniority prior to expiration of layover which is NOT contained in the rule and such prohibition can not be added by this Board even by this erroneous Award.

This Award does not conclusively resolve the question raised as does Award 11218 (Docket PM-12199).

Here we have the same claimant and same set of circumstances and the majority in Award 11218 clearly and correctly resolved the issue by stating:

"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."

Yet in the instant case, by using a parenthetical phrase to add meaning to the written rule, the majority held conversely and denied the claim WITHOUT resolving the issue involved.

This Award is incorrect and should be afforded no precedent value and for these and other reasons, dissent is registered.

R. H. Hack
Labor Member