Award No. 11677

Docket No. PM-13653

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: For and in behalf of F. O. LaVigne, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of New Orleans, Louisiana.

Because The Pullman Company did deny a claim for pay for Porter LaVigne at the punitive overtime rate in connection with his services as a porter out of New Orleans District during the month of February, 1961, wherein Porter LaVigne was compensated as a result of a claim filed under date of September 15, 1961, but was not paid at the punitive overtime rate, which the Organization maintains he should have been paid for the services so performed.

And further, for Porter LaVigne to be paid at the punitive overtime rate for the services mentioned in said claim as heretofore set forth.

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 F. O. LaVigne, who is now, and for some time past has been, employed by The Pullman Company as a porter operating out of the District of New Orleans, Louisiana.

Your Petitioner further sets forth that under date of September 15, 1961, the Organization, through Mr. J. P. Davis, the Local President of the New Orleans Division, filed a claim for and in behalf of Porter LaVigne in which it was contended that the Company violated certain rules of the Agreement when it removed Mr. LaVigne from an assignment on which he had been placed on February 22, 1961, in Line 9015, New Orleans to Los Angeles, after he had reported for said assignment, and assigned another Porter, J. H. Taylor of Los Angeles, to the assignment.

Your Petitioner further sets forth that in said claim it was contended that Management was in violation of the Agreement when it removed Porter La Vigne from this line and did not allow him to make said trip. The Organization

The claim in behalf of Porter LaVigne is without merit and should be denied.

All data submitted herewith in support of the Company's position heretofore have been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case the Claimant was improperly removed from service as a porter after he had reported for duty. The Carrier admitted its error and paid the Claimant for 40:25 hours at the pro-rata rate. The Organization claims that this should have been paid at time and a half rather than the pro-rata rates.

The applicable provisions of the Agreement are:

"RULE 3. Basic Month.

205 hours' work, credited to a calendar month as hereinafter provided, shall constitute a basic month's service.

Where a regular assignment is less than 205 hours' work per month, deduction shall not be made from the respective established monthly wage in consequence thereof.

* * *

"RULE 2 (i). Overtime rates of pay —

Time credited in excess of 205 hours, within a calendar month, shall be paid for as overtime at pro rata hourly rates up to and including 240 hours. Time in excess of 240 hours shall be paid for at the rate of time and one-half.

* * *

"RULE 14. Payment for Overtime Credits.

An employe shall be paid at his established overtime hourly rate for all hours credited within a calendar month in excess of the basic month."

It will be noticed that the parties to this Agreement, while they talk about work in Rule 3 use the term time credited in Rule 2 (i) and Rule 14. Work is defined as

"Bodily or mental effort exerted to do or make something; purposeful activity; labor; toil." Webster's New World Dictionary (1957 Edition).

While this Division has decided many awards wherein we have held that the proper measure of damages in cases of work not done is the pro rata rate, in this case we are called upon to construe this particular Collective Bargaining Agreement between these two parties and Awards under other Agreements are of no value if the language of the Agreement is different. Furthermore,

abstract principles must give way to specific contract language as it is our sole function to interpret the Agreement between the parties.

An analysis of the Agreement has been made as this Division has held on numerous occasions that the entire Agreement is before the Board. We find numerous places in the Agreement where time is credited for work not performed. There is no question that the Claimant in this case was credited the time in question and therefore the specific language of Rule 2(i) must govern.

While the Carrier, on the property, contended that payment at a pro rata rate was the practice, the record discloses that the Organization in answer to this, at all times stated that the action here was in violation of the Agreement. We, therefore, do not find that this is anything more than a contention on the part of the Carrier and is not proof of the fact. A sustaining award is therefore in order.

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 8th day of August 1963.