

Award No. 11826

Docket No. CL-11129

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
— CHESAPEAKE DISTRICT —**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The hours of assignment of Station Porter, Positions Nos. C-134, C-89, C-152 and C-128 are in violation of Rule 13(b).

(b) Claimants W. T. Washington, Mason C. Bryant, George F. Ford and W. T. Dawson, their substitutes or successors, shall, in addition to all other earnings, be compensated at rate of time and one-half each day for all time required to work between midnight, and 6:00 A. M. Claim to be retroactive to March 19, 1958 or 60 days prior to date claim was filed, pursuant to provisions of Article V, Section 3 of the August 21, 1954 National Agreement.

EMPLOYES' STATEMENT OF FACTS:

1. At the Carrier's Charlottesville, Virginia, Passenger Station, at some time prior to May 1958, Porter positions were assigned as follows:

Occupant	Position Number	Hours of Assignment	Meal Period	Rest Days
Lawrence Holmes	C-5	8:00 A.M.-4:00 P.M.	Rule 33	Saturday-Sunday
Silas Walker	C-14	12 Mid.-8:00 A.M.	Rule 33	Friday-Saturday
J. N. Harris	C-44	12:01 A.M.-8:01 A.M.	Rule 33	Sunday-Monday
Charles Bradley	C-129	11:20 A.M.-8:20 P.M.	3:20 P.M.- 4:20 P.M.	Sunday-Monday
W. T. Washington	C-134	7:30 P.M.-4:30 A.M.	11:30 P.M.-12:30 A.M.	Tuesday-Wednesday
M. C. Bryant	C-89	7:30 P.M.-4:30 A.M.	11:30 P.M.-12:30 A.M.	Tuesday-Wednesday

Two regular relief assignments were assigned to relieve the above positions as follows:

George F. Ford, Position No. C-152, relieved:

C-5 Saturday and Sunday

C-129 Monday

C-134 Tuesday and Wednesday

three consecutive shift basis does the midnight to 5:00 A. M. starting restriction of Rule 17 apply thereto." (Emphasis ours.)

This award made it plain that in cases where, as here, crew dispatchers are on a three consecutive shift basis, it does not follow that porters are also on a three consecutive shift basis, or that the three shift provision applies to all positions at a station, town, or terminal as the Employees contend.

The assignment of the two porter positions in question conforms in all respects to Rule 13 (c), and there has been no breach of any of the rules of the controlling agreement, in line with which the claim should be denied in its entirety.

All data contained in this presentation have been discussed in conference or by correspondence with the employee representatives.

OPINION OF BOARD: This case concerns the same parties and the same Rule-13(b) — as in Award 11825, although the factual situation is different.

In March 1958 Porter positions at Charlottesville, Virginia were assigned as follows:

Position	Hours	Meal Period
C-14	Midnight-8:00 A. M.	
C-44	Midnight-8:00 A. M.	
C-5	8:00 A. M.-4:00 P. M.	
C-129	1:00 P. M.-9:00 P. M.	
C-89	7:30 P. M.-4:30 A. M.	11:30 P. M.-12:30 A. M.
C-134	7:30 P. M.-4:30 A. M.	11:30 P. M.-12:30 A. M.

Soon thereafter revisions were made in this schedule so that ultimately, on August 22, the porter assignments were as follows:

Position	Hours	Meal Period
C-14	11:00 P. M.-7:30 A. M.	3:00 A. M.- 3:30 A. M.
C-44	11:30 P. M.-8:00 A. M.	3:30 A. M.- 4:00 A. M.
C-5	8:00 A. M.-4:30 P. M.	1:30 P. M.- 2:00 P. M.
C-129	11:20 A. M.-8:20 P. M.	3:20 P. M.- 4:20 P. M.
C-89	7:30 P. M.-4:30 A. M.	11:30 P. M.-12:30 A. M.
C-134	7:30 P. M.-4:30 A. M.	11:30 P. M.-12:30 A. M.

Positions C-89 and C-134, as may be noted, end between the hours of Midnight and 6:00 A. M., although Rule 13(b) declares that "where three consecutive shifts are worked covering the 24-hour period, no shift will have a starting or ending time after 12 Midnight and before 6:00 A. M." The question here is whether 13(b) applies in this situation.

It is clear that Carrier has provided around-the-clock porter service. Positions C-14 and C-44, between them, cover the hours 11:00 P. M. to 8:00 A. M. Positions C-5 and C-129, between them, cover the period 8:00 A. M. to 8:20 P. M. Positions C-89 and C-134 cover the hours 7:30 P. M. to 11:00 P. M. (and more). Thus, no period in the 24-hour cycle is uncovered.

However, 13(b) is applicable only "where three consecutive shifts are worked covering the 24-hour period." Leaving aside the disputed assignments C-89 and C-134 (both from 7:30 P. M. to 4:30 A. M.) we find four positions, each with a different shift:

Position	Hours
C-5 —	8:00 A. M. to 4:30 P. M.
C-129 —	11:30 A. M. to 8:20 P. M.
C-14 —	11:00 P. M. to 7:30 A. M.
C-44 —	11:30 P. M. to 8:00 A. M.

Whichever way these shifts are combined, there are some hours within the 24 which are unassigned. At the minimum there is a 2 hour and 40 minute hiatus between 8:20 P. M. and 11:00 P. M.

Even if one of the disputed shifts is added, it is still impossible to combine any three shifts so that they completely cover the 24-hour period.

Award 3821, although it had reference to three shifts with a four hour hiatus between the end of the third and beginning of the first, is not in point since the Board, there, was concerned with the interpretation of "continuous shifts" in a different paragraph of the rule. No claim regarding the "no shift" rule was involved. In none of the other cited cases can we find a situation which duplicates this; i.e. where a "no shift" rule has been invoked in the absence of the basic condition that there be three consecutive shifts covering the 24-hour period.

In the companion case (Award 11825) we have dealt with the question of whether the presence of a three consecutive shift assignment in another work group (Crew Dispatchers) requires the application of 13(b) to unrelated work. Portering, clearly, is even less like Crew Dispatching work than is the task of Ticket Clerk. For the reasons assigned in Award 11825, Petitioner's similar intentions in this case are rejected.

Under all the circumstances, this claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1963.