Award No. 11850
Docket No. PM-13860

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of G. R. Tillman who is now and for some time past, has been employed by the Chicago-Rock Island and Pacific Railroad Company as a Sleeping Car Porter operating out of Chicago, Illinois.

Because the Chicago-Rock Island and Pacific Railroad Company did, through Superintendent of Dining and Sleeping Cars, M. H. Bonesteel and Vice-President - Personnel G. E. Mallory, deny the claim filed by the Brotherhood of Sleeping Car Porters originally under date of October 9, 1962, for and in behalf of Mr. Tillman, in which the organization contends that Mr. Tillman should have been paid the sum of $17.53 for services performed by him during the month of August, 1962. And further because refusal to pay the above mentioned sum was in violation of the rules of the Agreement between the Chicago-Rock Island and Pacific Railroad and its Sleeping Car employes represented by the Brotherhood of Sleeping Car Porters, particularly Rules 2, 3, 4 and 7.

And further, Mr. Tillman should be paid the above mentioned sum of $17.53 as it is contended by the above mentioned claim.

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 Chicago, Rock Island and Pacific Railroad Company, classified as Sleeping Car Porters, and in such capacity, it is duly authorized to represent G. R. Tillman, who is now and for a number of years past, has been employed by the Chicago, Rock Island and Pacific Railroad Company, as a Sleeping Car Porter operating out of the Chicago District.

Your petitioner further sets forth, that under date of October 9, 1962, a claim was filed under the provisions of Rule 24 of the Agreement presently in effect covering wages and working conditions of Rock Island Sleeping Car Porters, setting forth that Tillman was short-paid the sum of $17.53, in connection with the service performed by him during the month of August, 1962.

"This Division has held in many cases that claims covering payment for deadheading time is for services rendered. **Where no work is performed during this period involved, the proper rate is at the pro rata rate,** such as the situation before us. Rule 8 was revised, effective November 1, 1945. Sections (a) and b(1) of the revised rule are applicable." (Emphasis ours.)

For these reasons we respectfully request your Honorable Board to deny the claim of the employes.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

OPINION OF BOARD: The essential facts are not in dispute. Petitioner contends that Claimant is entitled to $17.53 additional pay for the month of August, 1962. During that month Claimant was paid 32 hours deadheading at the pro-rata rate. Petitioner states that Claimant should have been paid the 32 hours at the punitive overtime rate. The issue is whether deadheading time, under the Agreement, is time worked for the purpose of applying punitive overtime pay.

Rule 4 of the Agreement between the parties reads:

"(a) All time worked in excess of Two Hundred and Five (205) hours to and including Two Hundred and Forty (240) hours per month shall be paid for as overtime on a minute basis on the pro-rata hourly rate as provided in Rule 2. All time worked in excess of Two Hundred and Forty (240) hours per month shall be paid for at the rate of time and one-half.

"(b) Under this rule, time paid for in the nature of arbitraries, extra or special allowances, including but not limited to the following, will not be used for purpose of calculating punitive overtime pay:

"(1) Time held at away-from-home terminal.

(2) Called or held and not used.

(3) Witness service (excluding time so held from regular assignment).

"(c) The Carrier shall have the right to rearrange assignments at any time to avoid overtime payments."

Rule 7, Deadheading reads:

"Deadheading, when properly authorized, will be credited as actual time up to eight (8) hours for each 24 hour period at the porter rate indicated in Rule 2."

The identical issue, involving the same parties, the same Claimant and the same Agreement, was considered and determined by this Division in Award 11275 (Stark). In that Docket PM-12885 Petitioner cited Rules 4 and 7 above quoted, as well as other Rules of the Agreement, and made the same arguments which are before this Division in the present dispute. We held in Award 11275 that deadheading is not time worked under Rule 4 and that

"the principal function of" Rule 7 "is to permit crediting of a limited amount of deadheading time, when properly authorized, for purposes of straight-time wage payments." Overtime payments, we said, are determined by the provisions of Rule 4.

Award 11275 was affirmed by Award 11345 (Miller).

We find nothing palpably wrong with these Awards. Their findings and conclusions are affirmed.

The claim, therefore, is 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 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.