Award No. 5431
Docket No. 5294
2-PULL-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Pullman Company violated the current working agreement when they deliberately and arbitrarily furloughed coach cleaner Ida B. Craig and assigned porters to perform coach cleaners' work commencing December 14, 1965.

2. That accordingly, the Pullman Company be required to pay Mrs. Ida B. Craig six hours per day seven days per week, commencing December 14, 1965, until recalled from furlough, account the violation.

EMPLOYES' STATEMENT OF FACTS: The Pullman Company, hereinafter referred to as the Carrier, maintain an agency at Phoenix, Arizona, where they employe Mrs. Ida B. Craig, hereinafter referred to as the claimant, as a car cleaner, cleaning cars arriving and departing and going through that point.

On December 14, 1965, the claimant received a notice that she was furloughed effective that date. The Pullman Company then assigned car cleaning work to Pullman porters.

This dispute has been handled on the property in accordance with the Agreement, with all officers of the Carrier designated to handle disputes, including the highest officer; all of whom have declined to adjust it.

The Agreement of June 16, 1951, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the provisions of Rule 89 of the agreement is controlling —

"Rule 89 Car Cleaners. Car cleaners' work shall consist of cleaning, acid scrubbing and washing of cars in yards and stations * * *"

The claimant has been working as a car cleaner for the carrier at Phoenix, Arizona, for many, many years. At the time of her furlough, she was the only

claims to the Second Division many years ago. See Second Division Awards 2938, 2580, 2569, 2545, 2544 and others.

Further, awards of the Adjustment Board hold that the conduct of the parties to a contract is often just as expressive of intention as the written word and that when a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. See Third Division Award 6076 (Begley) and Award 4086 (Parker).

CONCLUSION

In this ex parte submission the Company has shown that neither Rule 89 nor any other Agreement provision was violated when the cleaning of the car in Pullman Line 4017 was transferred to the Chicago District on December 15, 1965. The Company also has shown that Rule 89 does not designate at which terminal of a run a Pullman car or cars shall be cleared by a car cleaner or cleaners. Additionally, the Company has shown that when Line 4017 was extended to operate between Phoenix and Chicago on December 15, 1965, the Company asked the General Chairman of the Organization whether he wanted to consider transferring the Claimant cleaner from Phoenix to the Chicago District and was informed that the Organization was not interested in effecting the transfer of the Claimant. Also, the Company has shown that car cleaners do not have the exclusive right to clean Pullman cars, that the practice of porter cleaning under certain circumstances is a practice of many decades on Pullman and that such practice is presently followed at twenty (20) points throughout Pullman service, including Phoenix. Finally, the Company has shown that awards of the National Railroad Adjustment Board support the Company's position in this dispute.

The claim in behalf of Car Cleaner Craig is without merit and should be denied.

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

(Exhibits not reproduced.)

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

The carrier or carriers and the employe or employes invloved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The record reveals that car cleaning work was performed at Phoenix prior to December 15, 1965, when it was transferred to Chicago. The claim did the car cleaning work at this location prior to this date and alleges effect the Pullman porters are now doing the work, although not as extensively, as was done by the claimant. Thus Rule 89 of the current agreement whose pertinent part is quoted as follows:

"Rule 89. Car Cleaners. Car cleaners' work shall consist of cleaning, acid scrubbing and washing of cars in yards and stations" * * *.

The porters' statements that they cleaned the cars upon arrival in Phoenix for a period of one hour and a half or two hours would refute the contentions that they were just "Tidying up." Additional evidence to support this contention is the statement from the Pullman Company employes' organization Exhibit "C," "that it is his understanding with the Pullman Company that cars are to be cleaned at terminals where there is no cleaning force." Thus President of the Brotherhood of Sleeping Car Porters supports the contention of the claimant.

The facts and circumstances in this case are similar to those in Award 3891 which sustained the claim. In Award 3679, offered by the Carrier, the opinion states that the cleaning, "consisted only of slight dusting and incidental servicing normally performed by other employes enroute." This Award denied the claim. However, the facts and circumstances herein does not indicate incidental servicing, but car cleaning within the purview of Rule 89.

Thus the Division holds that the instant claim be sustained for the time other than the claimant performed car cleaning work.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1968.

DISSENT TO AWARD NO. 5431, DOCKET NO. 5294

Award 5431 is based upon a misunderstanding of the undisputed facts of record.

Rule 89. Car Cleaners obviously does not contain a provision controlling the terminal at which a Pullman car may be cleaned by car cleaners, nor does the Rule prohibit the transfer of cleaning work from one terminal to another. The Award holds, in effect, that because Claimant Craig did the car cleaning work at Phoenix prior to December 14, 1965, and because she alleges that Pullman porters performed the work commencing December 14, 1965, although not as extensively as was done by the Claimant, this employe, therefore, is entitled to continue to perform the work whether or not Management wanted the work performed at that terminal. The Award conveniently glosses over this point by quoting only the initial part of Rule 89, which is a partial definition of car cleaners' work but which does not reveal the fact that the Rule is silent on terminal at which cleaner's work may be performed.

Award 5431 is particularly faulty in that it makes no reference whatsoever to the Pullman Job Protection Agreement of July 19, 1966, which is retroactively effective to November 1, 1964, and which covers transfer of work

such as occurred in this case. The record shows that when Pullman Line 4017 was extended to operate between Phoenix and Chicago, instead of between Phoenix and Williams Junction, the Company asked the General Chairman of the carmens' Organization whether he wanted to consider the question of transferring Cleaner Craig from Phoenix to Chicago in accordance with the applicable provisions of the Job Protection Agreement. The General Chairman orally advised the Company he was not interested in making such transfer of Cleaner Craig. It is strange, indeed, that the majority can totally ignore a fact of such fundamental importance to the degree that no language of the Award recognizes the principle.

The Award is also faulty in that it fails to recognize that the porter cleaning of cars at certain terminals is an old practice on Pullman property. In fact, Agreements negotiated between Pullman and its porters as far back as 1924 contain rules which contemplate that porter employes will perform "interior cleaning at outlying termini." Thus, the fact that the porters in the Line submitted statements indicating they did not want to perform porter cleaning at Phoenix should not have been considered as significant. The more significant fact, and the fact that should have been controlling in this case, was that Management elected to have the car in Line 4017 cleaned by car cleaners at the Chicago terminal instead of at the Phoenix terminal. Such judgment is reserved to Management and not to either the car cleaners or the porters who operate in the Line.

The Company cited Second Division denial Award 3679 (Johnson) in a case almost identical and the majority rejects the Award presumably because the porters in this case allege they were working hard at porter cleaning at Phoenix. Apparently what the porters allege they were doing at Phoenix is more pertinent to the case than what Management stated was required of the porters in the performance of porter-cleaning work.

For the foregoing reasons, among others, Award 5431 is in error and we dissent.

H. K. Hagerman

H. F. M. Braidwood

F. P. Butler

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