

Award No. 1968
Docket No. 1802
2-PULL-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPT., A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement has been violated since November 25, 1953, when Railroad Employees are assigned to repair and inspect the electrical equipment on Pullman Cars arriving and departing in the Cleveland District, at Akron, Ohio.
2. That accordingly the Carrier be ordered to:
 - (a) Discontinue the use of other than Pullman Company Electricians to perform this electrical work on Pullman equipment.
 - (b) Compensate Pullman Electricians who were entitled to perform this work at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The following outlines the line numbers, train numbers, railroads, arrival and departure times of trains which include Pullman Cars at Akron, Ohio:

"Arrival"				Departure		
Line No.	Train No.	Time	R.R.	Line No.	Train No.	Time
1244	8	7:02 A.M.	Erie	1244	1	1:15 A.M.
2158	8	6:15 A.M.	B & O	2158	9	12:20 A.M.
6100	17	7:37 A.M.	B & O	6100	20	11:21 P.M.
6536	339	8:25 A.M.	P.R.R.	6536	338	7:55 P.M.
6568	339	8:25 A.M.	P.R.R.	6568	338	7:55 P.M.
6586	339	8:25 A.M.	P.R.R.	6586	338	7:55 P.M."

Each line listed above means one Pullman car. All of the above lines arrive and depart as listed above daily, except lines No. 6100, 6568 and 6586 which depart every day except Saturday.

1932, and no claim was initiated in this connection until June 1942. This circumstance is amply persuasive that the parties regarded South Hammond as an outlying point; and the conclusion is justified that the conduct of the parties reflected adequately the mutual agreement required by the rule."

See also Third Division Awards 2436, 2466, 4086 and 4439.

The organization is in error in progressing this case to the Board. In effect, the petitioner is attempting to compel the Second Division, National Railroad Adjustment Board, to write into the contract between The Pullman Company and this class of employees a provision or rule which gives Pullman electricians the exclusive right to perform work of the type contended for at points which are not districts or agencies of The Pullman Company. In this case the petitioner comes before the Board with a claim conclusively not covered by the agreement. That the organization recognizes this fact is brought out by the fact that it did not specify in its claim to the Second Division, National Railroad Adjustment Board, any rule or rules of the current agreement as having been violated by management. It is clear that the petitioner is requesting the Board to render decision limiting an accepted practice which has been in effect as far back as 1935. What the organization is attempting to obtain in this case is a change in the clear intent of the agreement, with especial reference to the scope rule, and the abrogation of a practice in existence prior to the signing of the working agreement, effective July 1, 1948, revised May 1, 1952, which change can properly be procured by the organization only through collective bargaining.

CONCLUSION

The facts as herein presented support the premise upon which the company rests its case. The company has shown that **RULE 1. Scope** applies to electrical workers who perform the work specified in the agreement in the districts and agencies of The Pullman Company and that no rule of the agreement gives Pullman electricians the exclusive right to perform work of the type contended for at points which are not districts or agencies. Also, the company has shown that Awards 1684 and 1686 support the company's position. Further, the company has shown that it is a well-supported principle that where 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 contract itself. Finally, the company has shown that in order to sustain this claim the Board would be compelled to ignore numerous decisions of the National Railroad Adjustment Board as to the force and effect of past practice.

The organization's claim is without merit and should be denied.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The parties to said dispute were given due notice of hearing thereon.

The organization contends that Rules 2, 5(b) and 37 of the current agreement between the parties were violated when railroad electricians were assigned to perform electrical work on Pullman cars at Akron, Ohio. Rule 2 concerns the assignment of work; Rule 37 is the seniority provision of the agreement, and Rule 5(b) relates to classification of work for electricians in districts and agencies. In the pertinent provisions, it reads as follows:

"Electricians' work shall include * * * repairing, inspecting, * * * electrical fixtures inside and outside of cars, * * * maintenance of all air conditioning systems in their entirety * * * and all other work generally recognized as electricians' work."

The company does not question the work as being that of electricians' but it points to the Scope Rule of the agreement and argues that the Pullman electrician rights thereunder are restricted to "repair shops, mechanic shop Chicago, districts and agencies of The Pullman Company * * * wherein the work covered by this agreement is performed." (emphasis supplied). It asserts that Akron, Ohio, is not a district or agency of the company, hence no violation of the agreement occurred by the fact that railroad rather than Pullman electricians did the work in question at that point. It relies upon Awards 1684 and 1686 of this Division involving similar claims at Lincoln, Nebraska and Colorado Springs, Colorado.

The organization concedes the correctness of the cited awards under the showings made by it in the respective submissions. It contends, however, that in the instant submission it has produced evidence to the effect that Akron is in fact a part of the Cleveland District, hence within the scope of the Pullman agreement. This evidence consists, first, of a carmen's seniority roster of car cleaners in the Cleveland District whereon is listed three (3) employees out of a total of sixty-one (61) assigned to Akron. Second, a list of alleged district and agency points stated to have been furnished by a company representative during negotiations.

We are not convinced by such evidence that the organization has proven thereby that Akron is in fact a district or agency within the meaning of the Scope Rule. In respect to the carmen's seniority roster, the agreement of that craft is not before us and we are not called upon to pass upon the effect of the list produced except to say that we attach no significance to it herein. No similar showing is made in respect to the electricians' roster which substantiates the company's assertion that it maintains no force of Pullman electricians at Akron. Its representation that it has not done so for a number of years is not convincingly challenged.

It is apparent that organization's Exhibit A headed "Point and Yard" is designed to serve some other purpose than that of listing districts and agencies. That some company officer may have so stated does not make it so.

Finding that Akron, Ohio, was not a district or agency, our prior Awards 1684 and 1686 are controlling and the claims must be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1955.