

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM.—

"Conductor E. H. Booth, Richmond District, claims that office employees are not entitled to perform the duties of conductors, that checking cars and receiving passengers is conductors' work, and claims pay for those services performed by platform men or other office employees when he was available after July 8, 1935, the date on which he was furloughed."

STATEMENT OF FACTS.—In their ex parte submission the employees stated the facts, as follows:

"This grievance originated on July 13, 1935, and has been progressed in the usual manner under the terms of Rule 10, agreement between The Pullman Company and its conductors (Exhibit 'A').

"Starting on May 17, 1935, office employees were assigned to the work of checking cars and receiving passengers for twenty minutes or more each night. This work is covered by Rule 2 (d), (Exhibit 'B'). The office employees assigned to this work were not paid for it according to that rule. Neither did they have any seniority rights to work as conductor, as provided in Rule 7 (a) and (d), (Exhibit 'C'). Conductor Booth had seniority rights but was furloughed, while office employees without seniority were assigned to perform conductors' work."

"RULE 2

"(d) When required to perform station duty, load trains, or any extra service other than road service, such service will be credited on the hourly basis and paid for in addition to all other earnings for the month, with a minimum credit of three (3) hours for each call."

"RULE 7

"(a) The seniority of a conductor, which is understood in this agreement to mean his years of continuous service from the date of last time employed, shall be confined to the district where he is employed.

"(d) A roster showing seniority of all conductors in each district will be revised and posted in January of each year in a place accessible to those affected and will be open to correction for 60 days. The names of conductors will be shown on the roster in accordance with seniority."

The carrier stated the facts to be:

On July 13, 1935, conductor E. H. Booth, seniority 3-19-24, Richmond District, protested to District Superintendent, as follows:

"I hereby make grievance of cars being checked at Broad Street Station by other than conductor, which is contrary to our contract. Cars for train #76 are being checked by conductor from 9:30 p.m. to 9:55, as they get diagrams at this time, leaving Richmond at 10 o'clock. Train #76 arrives at Richmond 10:20, leaving 10:35, making it necessary for cars to be checked by three different ones from office force. Not only checking

assignment of conductors. Further, that there is no agreement between the carrier and its conductors giving conductors exclusive right to any classification of work.

In the hearing on an exactly similar grievance of conductors Edwards, Meetze, and Harrison, Richmond District, before the Board of Adjustment for Conductors, President of the Order of Sleeping Car Conductors stated:

"There has been no intention of creating any hard and fast jurisdictional lines anywhere, and I am the most surprised man, I suppose, here, if there are any surprises, to be charged with attempting to put across any hard and fast jurisdictional lines. I would not have that understood for a minute. I want to make it clear to the Board that that is not my purpose, nor would any easing up of the situation result in creating any such jurisdictional restriction. The men simply ask for that work. If they can't have it, that settles it, I suppose. But nevertheless it won't relieve their tension, nor will it make them feel that they should not be entitled to it. It is merely a question of whether the management is going to let the conductors have work that is designated as conductor's work or whether they are going to continue the present practice."

The hearing of this grievance resulted in Decision No. 47, October 18, 1929, as follows:

"Decision—Board failed to agree."

This case was not progressed beyond the Board of Adjustment, notwithstanding the Board continued to operate until July 1934.

That neither the agreement between the carrier and its conductors nor any decision or award specify when and in what service conductors shall be used, therefore carrier is privileged to exercise its judgment in accordance with its service requirements.

Rule 7 (a) and (d) relating to seniority and rosters have no bearing on the case.

Award No. 1 of the Third Division, cited by the employees, is not applicable for the reason the circumstances in the two cases are not similar.

OPINION OF BOARD.—Both parties in this dispute have called specific attention to the application of Rule 10, Rule 7, paragraphs (a) and (d), and particularly, to paragraph (d) of Rule 2, governing working conditions between the Order of Sleeping Car Conductors and The Pullman Company, as having a direct bearing on the issues involved in this case. Rule 10 covers the manner in which grievances are to be made and handled, while paragraphs (a) and (d) of Rule 7 define the rules governing the seniority. Rule 2, paragraph (d), covers classes of service for which employees may be called other than for duties on the road; and the basis of settlement for such service together with the minimum credit for each call. In the presentation of this claim some statements have been made relative to the original presentation being based on seniority, and later amended to include the application of Rule 2 (d). No question is involved so far as the seniority rights of the claimant are concerned, and this question appears to have been presented solely as a means of establishing the application of the claimants' seniority for the purpose of this claim. The claim in this case covers a minimum daily period of twenty minutes, when Pullman sleeping cars destined to New York and Philadelphia were in active service in the station at Richmond, Va., and during the minimum period of twenty minutes were being checked and handled by station and platform employees, or by employees other than those coming under the rules of the Agreement between The Pullman Company and the Order of Sleeping Car Conductors, in the duties and service necessary for the proper care and reception of passengers.

Rule 2 (d) of the Agreement between the carrier and its employees is specific in its definition of the classes of service other than road service which a conductor may be required by the carrier to perform; and the fact that such a rule exists, with its specifically designated duties, is evidence of an agreement between the employees and the carrier that, when such duties as are defined are required for the handling of cars in active service and for the care, reception and loading of passengers, such service is a part of the service of the conductors with whom the Agreement has been made by the carrier.

The statement has been made in connection with this claim that the application of Rule 2 (d) is "permissive and not mandatory." The Board cannot agree to this interpretation. The proper interpretation of the Rule is that of defining a class of service other than road service which is required of conductors. Regarding the statement made that various runs have been made by "porters-in-charge", and that the service outlined in this case may be performed by a platform man, office employees, or a night agent "when required" by or at the discretion of the carrier, the Board submits its opinion that Rule 2 (d) is specific in its application. If it were applied only "when required" according to the interpretation of the carrier it would result in a confusing and uncertain application of the rules and, unless checked, with a resultant nullification of their object. Doubtless in runs operated by porters-in-charge, this service is handled under rules that have been provided for the conditions of such service. Office and platform men are what the designation implies, while the duties of a "night agent" are not properly limited to any particular class of work in the station, but are all-inclusive as the night representative of the carrier and night supervisor of all the station activities.

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 employe involved in this dispute are respectively carrier and employe 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 violated the rules of the existing Agreement in the improper application of Rule 2 (d).

AWARD

Claim is sustained, subject to deductions of all earned income as an extra employee, and, or, in the exercise of the claimants seniority rights during the period at issue, and to be determined through negotiation between the parties to the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON

Secretary

Dated at Chicago, Illinois this 23rd day of April, 1937.