

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM.—

"Conductors Edward Strueh, W. L. Forrest, J. A. Condon, D. J. Casey, S. S. McCarthy, C. H. Stratton and H. G. Anderson, Chicago Eastern District, claim that they have been deprived of the seniority to which they are entitled by the improper allowance of seniority to Conductor W. C. Nelson for time spent in promoted position. They claim pay for time lost on that account. They also ask that their seniority rights be restored."

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

"Conductor W. C. Nelson was promoted to the position of Demonstrator at the Century of Progress Exposition, May 31, 1933, to November 14, 1933, and May 26, 1934, to October 31, 1934. He was not carried on the payrolls as a conductor nor paid as such during these periods. Rule 7 (e), agreement between The Pullman Company and its Conductors, makes it mandatory to deduct this time from the seniority of Nelson (Exhibit 'A'). This was not done and as a result the conductors making this grievance lost work and pay."

The petitioners contend that the position given Conductor Nelson constitutes a promotion as that term is used in Rule 7 (e), which reads:

"RULE 7 (e)

"A conductor promoted but later returned to service as a conductor shall have credit on the seniority roster for all continuous time served as a conductor that had accrued at the time of his promotion."

In the carrier's ex parte statement of facts, W. C. Nelson's service record is shown as follows:

4-21-25 Employed as Conductor, Chicago Western District.
8-20-25 Transferred to Chicago Eastern District.
1933 Furloughed.
6- 1-33 Temporary demonstrator, Chicago Exposition.
11-12-33 Relieved as demonstrator and furloughed.
5-26-34 Temporary demonstrator, Chicago Exposition.
10-31-34 Conductor Chicago Eastern District.

The conductors concerned in this grievance held the following numbered positions on the seniority rosters posted in the Chicago Eastern District:

	Roster of January 1933	Roster of January 1935
D. J. Casey.....	#33	#31
H. G. Anderson.....	41	37
W. C. Nelson.....	42	38
J. A. Condon.....	43	39
W. L. Forrest.....	44	40
C. H. Stratton.....	46	42
E. Strueh.....	47	43
S. S. McCarthy.....	58	54

On February 6, 1935, the seven conductors named in claim wrote District Superintendent that roster was not correct and that Nelson's time as exhibitor at A Century of Progress should be deducted from his seniority.

District Superintendent conducted a hearing and denied the claim.

An appeal was taken to Zone Superintendent, who denied the claim and hearing before Assistant to General Manager resulted in denial. The claim was then filed with the National Railroad Adjustment Board.

POSITION OF EMPLOYEES.—The employes contend Nelson was taken out of service as conductor, used in another class of work and paid a flat rate. The claimants ask to be restored to the position on roster they are entitled to and paid for time lost in accord with Rule 10.

POSITION OF CARRIER.—The carrier contends Conductor Nelson was assigned to a temporary position created for the duration of the Exposition and that he was not promoted as contemplated by Rule 7 (e), or transferred to another District under provisions of Rule 7 (c).

Conductors Casey and Anderson being senior to Nelson have no interest and would not be affected by any decision in this case.

Conductors Condon, Forrest, Stratton, and Strueh, junior to Nelson, were recalled from furlough and benefited by the work they received while Nelson, their senior, acted as temporary demonstrator in 1933 and 1934.

Conductor McCarthy, junior to all conductors concerned, was not recalled from furlough either year.

Nelson was allowed seniority credit he was entitled to under rules and practice. The time of a conductor while on furlough is not deducted from his seniority credit and if he obtains outside employment or accepts work in another capacity with carrier, he is treated as on furlough until recalled as a conductor.

In the event prospective work is of short duration conductors have been permitted to waive recall in favor of a junior conductor and continue in their temporary employment.

In some instances carrier has found temporary employment for furloughed conductors, in storerooms, cleaning yards, etc., and time spent in such temporary work has not been deducted from conductor's seniority.

OPINION OF BOARD.—The hearings on the question at issue in this case have been conducted in accordance with the application of Rule 10 of the Agreement between the employes and the Carrier. The claim is made that Conductor W. C. Nelson, who was given temporary service at the Century of Progress Exposition, deprived other Conductors of the seniority to which they were entitled, by being given an improper allowance of seniority covering the period Conductor Nelson was in temporary service, and contend this constituted a promotion as defined in Rule 7 (e) of the Agreement. Rule 7 (e), which defines the seniority rating of a Conductor promoted or advanced from employment as a Conductor to a position of greater importance, and later returned to his former class and rating, would not in the opinion of the Board apply in a situation where a Conductor was placed in a temporary assignment to meet an emergent condition, even though such assignment would carry a temporary higher rating or increased pay. In the opinion of the Board the proper interpretation of Rule 7 (e) is to cover a position of advancement that is not primarily intended as temporary, and, therefore, emergent employment, but as an advancement in class and station and which later through economic service or other conditions or requirements may be changed and necessitate the Conductor's return to his former station through unexpected conditions beyond the control of either the Carrier or the employe. In the service of Conductor Nelson, the work given him at the Century of Progress Exposition was a separate and distinct class or assignment of work given to a Conductor on furlough that might readily have been given to an individual outside of the Pullman service without any violation of the rules or agreements between Conductors and the Carrier. As such the work given Conductor Nelson could not be considered as a promotion or a transfer in the meaning of any application of the rules between the Company and its employes. Beyond that the position may well have been considered a reward of merit, and the fact that it continued over a second period of time was a condition which was unforeseen and only determined upon after the first period of service or work rendered by Conductor Nelson had been completed and the first assignment filled. In other words, the second assignment, due to conditions beyond the control of The Pullman Company, was one which developed much later, and to which Conductor Nelson was assigned on the same temporary basis as in the original assignment.

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 Railroad Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Rule 7 (e) or 7 (c) are not applicable to the conditions of this claim.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 29th day of April, 1937.