

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductor L. C. Montgomery, Norfolk District, was removed from his regular assignment on Line 2291, Roanoke, Va., to Winston Salem, N. C., and return, by putting a porter in his place, effective February 16, 1939. He claims this was in violation of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company as interpreted by the Third Division, National Railroad Adjustment Board, in Award No. 779, Docket PC-698, and asks immediate reinstatement to his former position and pay for all time lost."

EMPLOYES' STATEMENT OF FACTS: "This grievance has been progressed in the usual manner under the rules of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company. Decision of the highest officer designated for that purpose is shown in Exhibit A.

"Prior to February 16, 1939, Line 2291 was operated by a conductor but on that date Conductor Montgomery was removed and a porter was assigned to do this work. The reason given for this change by the carrier at the hearing before the Superintendent was that the expense of operating a conductor was not warranted.

"Conductor Montgomery worked in a four-man pool as follows:

Leave Roanoke	10:25 A. M.	1st day
Arrive Winston Salem	2:05 P. M.	" "
Leave Winston Salem	3:05 P. M.	" "
Arrive Roanoke	6:45 P. M.	" "

"Distance—121.9 miles each direction.

"This conductor handles Line 2291 which operates Cincinnati to Winston Salem.

Leave Roanoke	9:10 A. M.	2nd day
Arrive Bluefield	12:50 P. M.	" "
Leave Bluefield	3:16 P. M.	" "
Arrive Harrisburg	4:36 A. M.	3rd "
Leave Harrisburg	11:20 P. M.	" "
Arrive Roanoke	4:40 A. M.	4th "

"Layover until 5th day when pool is repeated.

"Distance from Roanoke to Bluefield-Harrisburg and back to Roanoke is 824 miles.

"One car handled on the Harrisburg-Bluefield end of the pool in Line 2371, which operates New York to Bluefield and return.

than they would have thought to deny their own existence. Quite to the contrary, they themselves directed attention to the practice, and they acknowledged its full breadth. They asked that the Company agree to abolish the practice in its entirety, and repeatedly thereafter, in negotiations respecting the formation or change of the agreement they asked the Company to agree to give up the right to assign runs to porters in charge. Each time at the end of the negotiations they have receded from that extreme position and have accepted a contract not containing the drastic amendments which they had themselves proposed as necessary to abolish the porter-in-charge practice. The conductors now attack each exercise of the practice. They attack it before the Board, and they attack it publicly outside the processes of the Act. Their obvious philosophy, of course, is that if they can defeat each exercise of the practice they will in the end have defeated the practice itself. In pursuing this method they are asking this Board to accomplish for them by a construction of the contract what they have insisted for almost 20 years could be accomplished only by amending the contract. They ask the Board to write into the contract now the amendments which, after full consideration, were not written into the contract by the parties. We ask the Board to give the agreement the interpretation which this record shows has always been placed upon it by the conductors themselves, and in so doing to dismiss this complaint.

**THE CONDUCTORS' ORGANIZATION IS NOW SEEKING TO
DEPRIVE THE COMPANY OF ITS RIGHT TO MAINTAIN PORTER-IN-CHARGE OPERATIONS BY THE ENACTMENT OF FEDERAL LEGISLATION.**

"The conductors' organization by this proceeding, is requesting that the Board write into the contract now, by construction, the very amendments which, after full consideration and negotiation, were not written into the contract by the parties. Knowing, however, that the terms of the contract and the record of the organization's position in the negotiations of that contract are such that it cannot seek a final adjudication upon the construction of the contract, a third step has now been taken. The conductors are now seeking legislation in the Federal Congress (H. R. 9406, introduced April 16th, 1940; S. 3798, introduced April 17th, 1940), to accomplish by that legislation what was first sought by amendment to the working agreements, and latterly before this Board, by construction of the contract. This resort to legislation is the clearest evidence that the conductors know that the limitations which they desire to place upon the porter-in-charge practice are not to be found in the present contract.

"Never before, we believe, has any organization asked this Board for a ruling which the organization has itself made impossible by such a record as that presented here. We ask the Board to give the agreement the interpretation which the record in this case shows has been placed upon it by the conductors themselves.

"The action of The Pullman Company involved in the present claim is embraced within the practice described. For the reasons stated herein, which show there has been no violation of any rules of the Agreement between The Pullman Company and its Conductors, the claim filed in this proceeding is without merit, and should be denied."

OPINION OF BOARD: The principles involved in this claim in respect to the right of the Pullman Company to change from a conductor operated line to a porter-in-charge line are identical with the principles in Docket PC-854, Award 1461. That award is controlling in this case. We shall consider the record and the showing made in the light of the statement made in Award 779. We quote from that award:

"* * * we should be furnished among other things the following criteria; other instances of comparable lines on which substitutions have been made; the history of the contested as well as the compared lines; reasons for the changes; changes in traffic volume."

Prior to February 16, 1939, Conductor Montgomery, Norfolk District, was assigned on line 2291 operating from Roanoke, Va., to Winston Salem, N. C., and return; effective that date a porter was put in his place. The operation involved in this claim is confined to Norfolk & Western Railway trains Nos. 21 and 22. It concerns that part of sleeping car line No. 2291, which operates between Roanoke and Winston Salem. The question with which we are confronted is whether the Pullman Company violated the rules by using porter-in-charge between Roanoke and Winston Salem. One sleeping car is operated on this line in each direction. The train leaves Roanoke at 10:10 A. M., and arrives at Winston Salem at 2:05 P. M. It leaves Winston Salem at 2:35 P. M., and arrives back at Roanoke at 6:15 P. M. The distance is 122 miles in each direction. The record shows a steady and material decline in the traffic. It is a one car operation. There are comparable lines shown in the record. The carrier has met the burden of showing the reasons that justify the change.

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 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 claimants have failed to show violation of Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1941.