

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Conductor T. C. Sheffer, Denver District, claims violation of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company on account of failure to bulletin, as provided in Rule 31, D. & R. G. W. Trains Nos. 7 and 8, known as "The Prospector," operating between Denver and Salt Lake City, beginning November 17, 1941; this failure to bulletin said train depriving him and all other Denver District conductors of the opportunity to exercise seniority rights thereon, and request is also made for compensation for all losses to any conductors resulting from failure to bulletin said train.

EMPLOYES' STATEMENT OF FACTS: This case has been handled in accordance with the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company. Decision of the highest ranking officer designated for that purpose is shown in Exhibit "A." Rule 31, Exhibit "B," is involved. The instructions issued to train conductors, who were required to perform the duties in the Pullman car, are shown in Exhibit "C."

POSITION OF EMPLOYES: The position of the employes is well shown in the Statement of the Committee representing Conductor T. C. Sheffer, Exhibit "D" reading as follows:

It is the contention of the conductors that the Agreement between The Pullman Company and conductors in the service of The Pullman Company, as interpreted by Adjustment Board awards, beginning with Award No. 779, requires that wherever it is established that conductors' work exists on a train carrying Pullman equipment, the conductors have the right to perform that service. For that reason the operation of D. & R. G. W. Trains Nos. 7 and 8, known as "The Prospector," between Denver and Salt Lake City, beginning November 17, 1941, without a Pullman Conductor in charge of the sleeping-dinette-lounge car, having a Pullman Porter thereon, is a violation of the Agreement. The presence of Pullman Conductors' work on this train is positively and conclusively established by the bulletin issued by the D. & R. G. W. Railroad under date of August 27, 1941, for the attention of Train Conductors operating said train, Exhibit "C." That bulletin acknowledges that the sleeping-dinette-lounge car with eight sections and two Chambrettes is a Pullman operation and that Pullman tickets of all forms will be accepted for accommodations. This bulletin further calls upon Train Conductors to perform the duties of Pullman Conductors in handling the transportation and furnishing service. Further proof that the duties of Pullman Conductors are performed on this train is established by

was wholly controlled by the Railroad, and the Railroad received the revenue, no matter which tickets were used. No Pullman conductor operation existed on this train. The claim is without merit and should be denied.

OPINION OF BOARD: The facts giving rise to the controversy are not in dispute. The D. & R. G. W. owned the sleepers and collected all revenue flowing from their operation. The Pullman Company simply agreed with the D. & R. G. W. to provide porter service and furnish all supplies. In other words under its agreement with D. & R. G. W. the Pullman Company agreed to furnish all service and supplies in connection with trip operations of the sleepers, except that of conductors. Train conductors performed the service of sleeping car conductors. Claimants contend that by its agreement with D. & R. G. W., the Pullman Company violated its agreement with the Order of Sleeping Car Conductors in that, as a necessary consequence, sleeping car conductors were denied employment on the sleepers.

The agreement contains no express provision preventing the Pullman Company from entering into a contract such as it entered into with D. & R. G. W. here. Nor do we think any restriction upon its rights to enter into such a contract exists by necessary implication.

The sleeping car conductors have never claimed the right to employment on sleepers owned and operated by railroad companies; and, of course, could not press such a claim unless an agreement is in effect on the property. But say claimants this was not exclusively a D. & R. G. W. operation; that by using Pullman Company service in part it was obliged to use all. To give such force to the controlling agreement would restrict the Pullman Company's right of contract with third parties. Such a result could be justified only if the controlling agreement stipulated for such a restriction.

As we view the situation D. & R. G. W. not only owned the sleepers but retained exclusive control over their operation. Had it contracted with any company or individual other than the Pullman Company for providing porters and supplies the claimants obviously would have no standing. The fact that it did contract with the Pullman Company for such service is but a fortuitous circumstance which does not change the situation. There is nothing in the agreement between the Order of Sleeping Car Conductors and the Pullman Company which restricts the right of the latter to contract for all or any portion of its services for use in operation of equipment owned and operated by railroad companies.

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 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 record discloses no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of April, 1943.