

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS—PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System claims that the operation of Lines 2005 and 6043, A. C. L. Trains 75-76 and 91-92 between Tampa and Jacksonville, Florida, is in violation of Rules 18 and 54, Agreement between The Pullman Company and Conductors in the Service of The Pullman Company, as interpreted by Adjustment Board Award No. 1884, dated July 24, 1942, and that said operation, which is a pool of these lines is depriving conductors of their rights to work as provided in Rules 18 and 54, and claiming compensation to those conductors for work thus denied them; with the further proviso that this pool of lines shall immediately be separated and a relief established on the over-night run of Trains 75-76.

EMPLOYES' STATEMENT OF FACTS: This case 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. The decision of the highest ranking officer designated for that purpose is shown in Exhibit No. 1.

Line 6043 operates between New York and Tampa on A. C. L. 91 southbound, returning northbound on Train 92. Line 2005 operates between New York and Sarasota southbound on A. C. L. 75, returning northbound on Train 76. The A. C. L. time card shows 75 and 76 as companion trains and 91 and 92 as companion trains. Two Tampa District Conductors were assigned to operate on A. C. L. 76 and 91 and two on A. C. L. 92 and 75, between Tampa and Jacksonville and return to Tampa. The operation of conductors on 76 and 91 is as follows:

Line 2005 (Sarasota-New York) between Tampa and Jacksonville.

Car Operates		Conductor Operates	
Outbound ACL 76		Inbound ACL 91	
Report Tampa	8:45 pm (1)	Report Jacksonville	8:15 am (2)
Receive passengers	9:00 pm "	Receive passengers	8:15 am "
Depart	10:30 pm "	Depart	8:45 am "
Arrive Jacksonville	6:30 am (2)	Arrive Tampa	2:30 pm "
Released from duty	7:00 am "	Released from duty	2:45 pm "
Elapsed time	10 hrs. 15 m.	Elapsed time	6 hrs. 30 m.
Less relief enroute	3 " —	Less relief enroute	0 " 0 "
Time on duty	7 " 15 "	Time on duty	6 " 30 "

Number of men in line—2

Additional relief at home terminal—None.

75 and 76 would require $2\frac{1}{2}$ conductors; that on trains Nos. 91 and 92 would require $2\frac{1}{2}$ conductors. Consequently, $\frac{5}{6}$ of a conductor more would be required than is needed. This "make-work" scheme is extremely badly timed and is not supported by any rule of the Agreement.

This claim is stale. It is not supported by any rule. Consequently, it is without merit and should be denied.

OPINION OF BOARD: Although the facts on which they are based are necessarily different it is conceded by the parties that the disputes involved in Dockets Nos. PC-2466, PC-2487 and PC-2517 are identical in principle and that our decision in one will be determinative of their rights in the others. An examination of the record in each discloses that arguments there advanced in support of contentions relied on are equally applicable although it should be mentioned they are somewhat differently stated and in some respects are not the same. Nevertheless, wherever they appear, they are all entitled to consideration in disposing of the issues and we shall treat them as though all three cases were consolidated notwithstanding our decision in each will be separately rendered.

The factual situation giving rise to this controversy and the arguments advanced by the parties in support of their respective positions have been generally stated in their submissions.

So far as pertinent facts are concerned they can be briefly summarized. The dispute involves conductor operations on Atlantic Coast Lines Trains Nos. 76-91 and 92-75, carrying Lines 2005 and 6043, and some others whose identification is not required. Prior to December 1, 1936, the effective date of the current agreement, Trains 75-76, operating southbound and northbound respectively, were overnight trains while Trains 91-92, also operating southbound and northbound respectively were day trains. On the date of its execution the Agreement contained and still retains Rule 54 which reads:

"Overnight round trip runs of fourteen (14) hours or less—elapsed time—in each direction, shall not be operated in conjunction with other runs."

In an attempt to comply with the rule just quoted, conductor operations were changed after its promulgation. Two conductors were assigned to operate on Trains 76-91. Their operation was Tampa to Jacksonville overnight and from Jacksonville back to Tampa the next day. Two other conductors were assigned to Trains 92-75. Their operation was the same except they left Tampa in the daytime and came back the following night. No one of the two conductors assigned to such operations performed service on any trains other than on the two to which he had been assigned.

The gist of the controversy rests on the construction placed on Rule 54 by the respective parties. Stripped of excess verbiage it can be stated the claim of the Conductors' Organization is predicated upon the proposition the operation of runs is based upon the railroad's schedule of trains and/or lines, and that the terms "overnight round trip runs" and "other runs" as used in the rule has reference and application to runs of that character, while the Company's position is that such language relates solely to conductors' runs, established and operated by it, and which it concedes are necessarily made up of trains. It also concedes conductors are assigned by trains.

Since the parties are in accord the dispute involves only the question of the meaning and intent of Rule 54, and that the provisions of Rule 18 are not applicable unless the first mentioned rule has been violated, the issue has been somewhat narrowed in its scope. It has been simplified also by the concession that "an overnight round trip run," aside from the determination of what a run is within the meaning of the rule, has been interpreted by the parties to be a trip on which the conductor operates from his home station to an outlying point overnight (one night) and returns to his home station the following night.

With all this the issue which must be determined is decidedly complex in character. That this is true is evidenced from the language used by the Referee in Award 1884, a dispute where, except for minor differences appearing to have no bearing upon the decision, the principles involved were identical. To say the least that can be safely said with respect to arguments advanced by the parties in presenting their cause in that proceeding. Further evidence of complexity is to be found in the fact that both parties to that award are critical of the decision there announced, the Carrier claiming it was wrong in its entirety and the complainant, while concurring in the result, *contending it was partially based upon an erroneous premise.*

From what has heretofore been said, it must be apparent there is no possibility of reconciling the positions assumed by the parties. One or the other is necessarily based upon an erroneous theory resulting from construction placed upon the language appearing in the rule. So also, it must be apparent that if a run is to be given the significance attributed to it by complainant, the conductor assignments are operated in conjunction with other runs, while if it is given that placed upon it by the Company there is no violation because if runs contemplated by the rule are the conductor assignments and the determining factors, there is then no prohibition against the creation of conductor operations under it in the manner or under the circumstances adopted by the Company in its present operating schedule.

We turn then to what we deem the all-controlling question. At the outset it should be stated the rule is ambiguous. We confess difficulty in arriving at a conclusion as to its true meaning and readily concede that our decision is subject to plausible arguments which, when followed to ultimate conclusion might influence others to reach one to the contrary. Notwithstanding, we are convinced our conclusion is the only one possible in view of the conditions and circumstances disclosed by the record. What is meant by the word "runs," as used in Rule 54 of the current contract? It must be remembered that when it was adopted the parties understood conductor operations were made up of trains and that conductors were assigned to trains,—trains which were designated and identified not by the Pullman Company, but by the railroad over which its cars operate. Two trains, Nos. 75-76, were overnight trains. Their operation was regarded by the parties here, as well as the railroad, as the overnight round trip run. Two other trains, 91-92, made what was considered by all the parties as the day run. With that understanding the contract was executed. By its terms it provided overnight round trip runs should not be operated in conjunction with other runs. Under such circumstances we believe that in respect to the trains and runs involved in this case, the fair import of that language was that the term "runs" referred to the movement of trains and cars in regular line service and not to assigned conductor operations. So construed it follows that the operation schedule put into effect by the Company and of which complaint is here made, violates the intent and purpose of the provisions of Rule 54. The overnight round trip run of Trains Nos. 75-76 is now operated in conjunction with, which emphasized phrase defined merely means in combination with or joined together with, the daytime run of Trains 91-92. The operation should be discontinued and conductors affected be paid for all loss of time resulting from the operation of the one run in conjunction with the other from April 1, 1943, the date on which the claim was formerly presented.

In conclusion it should be stated we are not in accord with the Company's position that Award No. 1884, Third Division, has no application to the present dispute. The controversy there differed in one particular only and that was with respect to the character of assigned conductor operations which as we have seen is not determinative of the question of whether the Rule was violated. Otherwise the issue, under facts almost identical in their nature, was whether an overnight round trip run was being operated in conjunction with another run. Irrespective of the reasoning which influenced

its rendition the decision was that one of the runs involved was an overnight run and its pooling with—which merely means an operation in conjunction with—the daylight run affected a violation of the Rule. The award is applicable to the instant dispute and, while it has not been decisive of our conclusion and we would have experienced no hesitancy in rendering a contrary decision had we deemed the circumstances and conditions presented for our consideration warranted that action, it was entitled to and has been given respectful attention. We regard it as a precedent which supports and fortifies the principles announced in the present award.

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 Employees involved in this dispute are respectively carrier and employees 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 Rule 54 of the current agreement has been violated and the claim should be sustained as indicated in the opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of January, 1945.