

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS—PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims, for and in behalf of Conductor R. W. Carter, Baltimore District, (1) that because The Pullman Company, on January 7, 1945 barred him from operating in his regular assignment on Baltimore & Ohio Trains 7 and 8, to be effective March 19, 1945, the Company acted unjustly and in abuse of its discretion and in violation of Rules 25 and 31 of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company; and (2) now asks that he be restored to his run on B. & O. Trains 7 and 8, the run that he was assigned to under the provisions of the rules of the Agreement, and be compensated for each trip beginning with March 19, 1945, that he has been denied the right to operate in his assignment.

OPINION OF BOARD: Carter, the Claimant, has been in the employ of the Carrier since 1909 and holds seniority rights in the Baltimore District. In fact, he is the senior conductor in the district. For some years prior to January 7, 1945, his assignment was on Trains No. 7 and No. 8 of the Baltimore & Ohio, running between Jersey City-Baltimore-Washington and Chicago. On the day mentioned he was disciplined for fraudulent conduct in connection with his duties which he admits, would have justified his discharge by the Carrier. The Carrier, however, in consideration of his long service and prior good record imposed a ninety day suspension coupled with a ruling which was designed to bar him from resuming his old position on Trains No. 7 and No. 8 at the end of the period of suspension.

He accepted the suspension without protest but he did protest the order barring him from assignment on Trains No. 7 and No. 8 as an arbitrary and unauthorized infringement of his seniority rights.

When it suspended Carter the Carrier advertised the assignment on Trains No. 7 and No. 8 as a temporary vacancy. After the expiration of the 90-day suspension the run was advertised as a permanent vacancy. Carter bid on it but his bid was rejected. Instead, he was given an assignment on Baltimore & Ohio Trains No. 19 and No. 20, running between Baltimore and Detroit. The primary question to be determined in connection with the claim as presented is whether the ruling of the Carrier barring Carter from the assignment on Trains No. 7 and No. 8 was arbitrary and unauthorized by the Agreement. There is no limitation, in the rules related to discipline, upon the kind or character of penalty the Carrier may impose upon a delinquent employee. There is, however, the limitation recognized by many of the decisions of this Board that the carrier may not act arbitrarily or capriciously in the imposition of penalties.

Now, it cannot be denied that the Carrier, in barring Carter from the assignment on Trains No. 7 and No. 8 imposed a penalty which infringed upon his seniority rights as defined in Rules 25 and 31 of the controlling Agreement. This, we think, constituted a violation of the Agreement by the Carrier.

The Carrier, however, urges that Carter, notwithstanding his seniority, was lacking in "fitness and ability" for the assignment on Trains No. 7 and No. 8 when the position was bulletined after the expiration of his suspension. We think this position of the Carrier is capricious. For, it immediately assigned him, without the formality of bulletining, to a run which it would seem from the record, was equally demanding of the qualities of fitness and ability. In barring Carter from assignment on Trains No. 7 and No. 8, the Carrier acted arbitrarily and capriciously and violated Rules 25 and 31 of the controlling Agreement. The Carrier seeks to justify its action by saying that the bar was imposed at the demand of the B. & O. This is no justification for an act which impairs Carter's seniority rights. See Award No. 1233.

The secondary question for determination is whether Carter is entitled to recover from the Carrier the amount he would have received had he been restored to the assignment on Trains No. 7 and No. 8. He contends that he is entitled to recover in such amount without diminution on account of the amount he actually received during the period covered by the claim, for services in his assignment to Trains No. 19 and No. 20.

He bases his contention on Rule 50 of the Agreement in force at the time he was disciplined which reads as follows:

"If the final decision sustains the contention of the conductor, the records shall be cleared of the charges if any have been made against him and he shall be returned to his former position or to that for which he is contending and compensated for any wage loss suffered by him."

The Agreement containing that rule was superseded by an Agreement, entered into between the Carrier and the Organization, effective September 1, 1945. Rule 50 was carried into the new Agreement, in identical language, as Rule 53. At the time of executing the Agreement effective September 1, 1945, the parties also executed a "Memorandum of Understanding", the pertinent parts of which read as follows:

"In the application of Rule 53 'Record Cleared of Charges' of the Agreement between The Pullman Company and its Conductors, represented by the Order of Railway Conductors of America, effective September 1, 1945, it is understood by the parties that 'compensation for any wage loss suffered by him (the conductor)' means the wages which the conductor would have earned had he remained at work as a conductor without regard to any amounts he may have earned during the period he was not employed as conductor.

"Similarly, it is understood that if a Pullman conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the Agreement, effective September 1, 1945, and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month."

The provisions of the Memorandum clearly refer to claims arising subsequent to the effective date of the Agreement, September 1, 1945. The first paragraph of the Memorandum, however, is significant as to the meaning to be given Rule 50. For it carries the necessary implication that the amount he earned as a conductor on Trains No. 19 and No. 20 must be computed in determining any wage loss suffered by him.

The Claimant has adduced no evidence with respect to the amount he earned on the assignment on Trains No. 19 and No. 20; nor has he shown what he would have earned had he been assigned to Trains No. 7 and No. 8. In other words, he has failed to prove that he sustained any loss under Rule 50 (53) in the light of the interpretation put upon it by the parties in the "Memorandum of Understanding".

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 the Carrier's action in barring Claimant from assignment on Trains No. 7 and No. 8 was arbitrary and capricious and in violation of the Agreement.

AWARD

Claim sustained insofar as it pertains to right of assignment on Trains No. 7 and No. 8. Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of January, 1947.