Award No. 3727
Docket No. PC-3695

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, 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 Conductors E. H. Castle and W. W. Macdonald, of the Chicago Southern District, (1) that Conductors Castle and Macdonald should be relieved from lifting railroad transportation in the Illinois Central Station at Chicago for Train No. 15; and (2) that they should be compensated for all such service at the train conductor's rate as provided in the agreement between the Illinois Central Railroad Company and its train conductors, in addition to and independent of the compensation allowed them at their regular Pullman conductor's rate, beginning on March 1, 1946, and for all subsequent dates that they are required to handle railroad transportation.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and conductors in its service bearing effective date of September 1, 1945. This dispute has been progressed up to and including the highest officer designated for that purpose, whose letter denying the claim is attached as Exhibit No. 1.

There is also attached, copy of minutes of hearing in this case held in the office of Mr. J. B. Kenner, District Superintendent, Chicago Southern District, The Pullman Company, Chicago, Illinois, on May 27, 1946, designated as Exhibit No. 2, and which, by agreement with the Company, is being submitted for the Board's information with this ex parte submission of the employes and, in the interest of avoiding repetition, will not be attached to the submission of the Company.

The essential facts in this case are as follows:

Commencing March 1, 1946, the Pullman conductors assigned to Line 518, I. C. Train No. 15, were required to lift railroad transportation from passengers holding Pullman space in the car assigned to that line, without compensation for that work. They had not theretofore been required to perform this service. This work had previously been handled by the Pullman porter. This car had been discontinued for a period of time during World War II. It operates between Chicago and Waterloo, Iowa, and is placed for occupancy at 9:30 P. M., although the train is not scheduled to leave Chicago until 11:50 P. M.

There were, at this time, two other trains carrying sleeping cars leaving the I. C. principal station in Chicago in the neighborhood of midnight, viz., Train No. 17 leaving at 11:55 P. M. and Train No. 9 leaving at 10:25 P. M. Train conductors report for Train No. 17 at 9:30 P. M., or 2:25 hours in

further submits that it is not the function of the Third Division, National Railroad Adjustment Board, to modify the terms of the Agreement arrived at by conference and agreement between the Company and the Organization. The summation of the principles here involved is concretely expressed in the language of Award 217, Fourth Division, National Railroad Adjustment Board Docket No. 215, which language states as follows:

> "We agree with the parties that the matter in dispute is not within the current agreement. It is not within the jurisdiction of this Board to either make, or amend, or nullify, agreements duly executed by a carrier and its associated employes. This limitation of the Board is bottomed upon the right of freedom of contract, sound principles of jurisprudence, and common sense. The Board has no authority to read into a contract that which its makers have not put there expressly, or by clear implication. The Board has said so many times. As noted in Award No. 5288, page 3 (1st Division, Hon. Edward F. Carter, Referee), the Board has no power to rewrite the contract or to relegate to itself the powers and duties of the parties. And in Award No. 5396, page 8, (1st Division, Hon. Robert G. Simmons, Referee): 'In the absence of rules clearly establishing the right it will not be held that the carriers and employes contracted to pay and to be paid two days' pay for one day's work. In the instant case, the established practice followed, without objection, by both carriers and employes over a long period of time supports the position taken by the carrier in the construction of the cited rules.' Of course, repeated breaches do not abrogate a clearly expressed contract provision, but where the contract is silent, or the meaning of a provision is not clear, the long-continued practice of the parties is most persuasive proof that the practice was within the purview of the contract, and the intention of the parties. Such practical construction of a contract should not be brushed aside by any tribunal. This tribunal may only determine the question of where the parties have placed themselves by their own agreement."

The Pullman conductor has lost no rights as an employe by performing the small time-consuming task of lifting rail transportation for Pullman passengers, which service, however, is one of considerable convenience and benefit to the patrons of the Company. Conclusively, the service complements the work of a Pullman conductor and cannot be construed as detracting either from the importance of a Pullman conductor's work or from his efficiency as a conductor.

The Company submits that the instant claim should be denied: first, because there is no rule in the current Agreement, effective September 1, 1945, or in any prior Agreement, restricting the right of The Pullman Company to require its conductors upon occasion to lift railroad transportation in conjunction with Pullman tickets and, second, because the reasons herein stated under points 1 to 6, inclusive, fully sustain the right of Management to assign Conductors Castle and MacDonald to the work complained of.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here presented of two Pullman Conductors, Castle and Macdonald, is that (1) they should be relieved from lifting railroad transportation in the Illinois Central Station in Chicago for train 15, and (2) that they should be compensated for all such services at the train conductor's rate as provided in the Agreement between the Illinois Central Railroad Company and its train conductors for the period beginning March 1, 1946.

Three Pullman Conductors are assigned to train 15. Only two of them joined in this claim.

These Pullman Conductors report for duty at 9:15 P. M. and receive passengers at 9:30 P. M. for train 15, scheduled to leave for Waterloo, Iowa,

at 11:50 P.M. Between 9:30 and 11:20 P.M. these claimants lift both Pullman and railroad transportation from the passengers using the Pullman car on said train. The claimants do not punch the railroad tickets nor do anything else with them except to place them in an envelope which they turn over to the railroad conductor when he arrives at 11:20 P.M. They so collect an average of fourteen tickets each night.

The claimants insist that the work of lifting railroad transportation belongs to the railroad conductors; and that requiring Pullman Conductors to do this work violates the Agreement with the Pullman Company covering Pullman Conductors.

The current Agreement, effective September 1, 1945, does not expressly cover this subject. The Employes cite us to rule 64 of that agreement as throwing some light on the subject but that rule covers only the division of the work which the Pullman Company may make between conductors and porters and says nothing about lifting railroad transportation.

The Carrier, in its submission, insists that the lifting of railroad transportation from passengers of the Pullman cars which are open for occupancy in a station prior to the departure of a train does not constitute work which is covered by the contracts between the Railroad Company and the railroad conductors.

In support of this contention they cite Award 6990, which was decided by the First Division without a Referee, and which denied a claim of railroad conductors for not being used for taking up railroad transportation on Pullman cars where the transportation had been taken up by the Pullman Conductors, and Award No. 7652 of the First Division in which case Richard F. Mitchell sat as Referee. We are also cited to Award No. 1826 of the First Division in which Frank P. Douglas, sitting as Referee, held that:

> "Selling and lifting transportation from passengers in transit has ever been recognized as conductors' work incidental to their train. Lifting transportation in stations is no more incidental to their train than station selling of transportation."

As part of their submission, the Carrier also has shown that the practice of using Pullman conductors and Pullman porters to lift railroad transportation in this manner has existed over the entire country for varying periods of time, in some cases for as long as forty (40) years.

Since the parties have not spelled out in their Agreement the duties of a Pullman conductor, we are justified in looking to the practice over a long period of time as being of controlling effect in this controversy. If lifting railroad transportation under such circumstances as prevail in this case was not a part of the Pullman conductors work or was not work which could properly be assigned to Pullman conductors, the Employes had many opportunities to cover the subject in the many contracts which have been negotiated since the practice has been in effect.

The effect of long practice in the interpretation of contracts, where the contracts are ambiguous and have not clearly defined the rights of the parties, is shown in Awards Numbered 1397, 2090, 2326, 2436, 2466, 3388 and 3603.

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 we find no violation of the current Agreement in the conduct of the Carrier in requiring the Claimants to lift railroad transportation under facts disclosed in this case. It, therefore, follows that the Claimants are not entitled to compensation for such services.

AWARD

Claims (1) and (2) are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1947.