

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

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 the Philadelphia District extra conductor who was entitled to the work, compensation in addition to that already received for the month of May, 1946, in the amount which he would have earned had he been assigned as conductor when two (2) parlor cars were operated in service on Penna-Reading Seashore Train 1005 between Philadelphia and Atlantic City on May 11, 1946, without a conductor being assigned to that service. It is claimed that Rule 64 of the Agreement was violated.

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, and also a "Memorandum of Understanding," Subject: "Compensation for Wage Loss" dated August 8, 1945, which is attached as Exhibit No. 1. 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. 2.

On May 11, 1946, PRSL Train 1005, left Philadelphia with one (1) parlor car in service and in charge of a porter. There was a second parlor car in the train, not in service, when leaving Philadelphia but enroute "deadhead" to Atlantic City. There was a Pullman Conductor on the train "deadheading" under orders from Philadelphia to Atlantic City. No conductor in service was assigned to the run.

At North Philadelphia more parlor car passengers boarded the train than could be accommodated in the one parlor car which was in service. The porter in charge of that car placed the second (or deadhead) car in service and a porter who was deadheading on the train took charge of it.

Rule 64-A of the Agreement reads in part as follows:

"Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, in service ***"

POSITION OF EMPLOYES: There were two parlor cars in service on PRSL Train 1005 May 11, 1946. No Pullman Conductor was in charge. The Employees claim that there should have been a Pullman Conductor in charge as required by Rule 64-A of the Agreement, and that the extra Conductor of the Philadelphia District, who was entitled to be used for the trip should be compensated for this loss of earnings. The Company declines this claim and states that "In view of the circumstances which prevailed on the trip in question, I do not consider the Management violated Rule 64; therefore, claim is denied." (See Exhibit 2.) Certainly the Rule was not complied with.

the literal meaning of a rule. Such an emergency condition was present in the condition arising at North Philadelphia. If Management could have made a conductor "available," there can be no question that Management would have complied with the literal meaning of the Rule; otherwise Management would have been subject to penalty for rule violation. The whole facts and record in this dispute clearly establish that Management not only could not have made a conductor "available" but also that Management did not have information about the emergency condition until too late to act. The operation cannot, therefore, be construed as violating the spirit and intent of Rule 64.

CONCLUSION.

The Company has herein shown that the operation in question arose from emergency conditions in North Philadelphia on May 11, 1946. The Company further has shown that on the above date no unassigned Philadelphia District Pullman conductor was "available" for assignment on P-RSL train No. 1005 as that term is defined and interpreted in Rule 38 of the Agreement. Further, the Company has shown that although deadhead Conductor Grant was aware that a technical violation of Rule 64, paragraph (a) was in progress, he neglected or refused to perform the work incident to the operation. The argument of the Organization that Grant would have been subject to discipline if he had modified his Assignment to Duty slip by performing the conductor work incident to this trip falls completely for want of merit.

(Exhibits not reproduced.)

OPINION OF BOARD: On Saturday, May 11, 1946 the Pennsylvania-Reading Seashore Train left the Broad Street station in Philadelphia for Atlantic City with one parlor car in service in charge of a porter. No pullman conductor was assigned to the train. There was a second parlor car with a porter in the train, but both car and porter were en route deadhead to Atlantic City. There was also a pullman conductor on the train deadheading under orders from Philadelphia to Atlantic City.

At the North Philadelphia station more parlor car passengers boarded the train than could be accommodated in the one parlor car which was in service. The North Philadelphia station is on the direct line between New York City and Chicago and through trains from both cities stop at that station to discharge passengers for Atlantic City without pulling into the Broad Street station. Thus the need for accommodations for passengers cannot be determined by the number boarding the train at the Broad Street station. On the date in question the pullman porter in charge of the single parlor car in service placed the deadhead parlor car in service at the North Philadelphia station and assigned the deadhead porter to the car.

Thus at that point two parlor cars were in service. Rule 64-A reads in part as follows:

"Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, in service, * * *"

Therefore, with two parlor cars in service and no pullman conductor, there was a violation of the rule.

But Carrier claims that the deadhead pullman conductor may not complain because he was notified by the porter that the second car was in service, and failed to take charge. However, by continuing to deadhead the conductor was following his official orders and we seriously doubt a porter is authorized to change such orders. Carrier further claims the need for a second car arose from an emergency it could not anticipate. In cases of emergency where the Carrier was in no position to know of the impending necessity in time to remedy it, it has been held not to have violated applicable rules and claims have been denied by the First Division. But in Award 4859 it would have been necessary to obtain the extra man from a point 33 miles away; and in Award 6162 to deadhead crews from Florence, South Carolina to Wilmington, North Carolina for which there was not sufficient time.

However, we did not find these awards applicable to this case. The "unexpected" situation arose here at a station only 5 miles from the Broad Street station, at a station where the through trains running between the two largest cities of the country regularly and customarily discharge passengers for Atlantic City. Furthermore, these trains do not enter Broad Street station so that conditions existing at the latter station can not be determinative of the necessary requirements.

Nor can Carrier claim there was no pullman conductor available when there was one on the very train which required his services, and the train was still within the City of Philadelphia and at the very point where the need for his services arose.

Under the circumstances the claim must be sustained.

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 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 Carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of March, 1948.

DISSENT TO AWARD 3808, DOCKET PC-3739.

On May 11, 1946, train 1005 handled the single parlor car regularly operated in line 2442 between Philadelphia and Atlantic City and a deadhead parlor car en route to Atlantic City.

At North Philadelphia the porter on the regular parlor car placed the deadhead car in service in order to accommodate an overflow of passengers, who boarded the train at that station.

The Carrier did not arrange for or direct the use of the deadhead car. In fact, it had no information as to the porter's action.

While there is no dispute concerning the provisions of Rule 64 (a) and 38, there is no justification for the imposition of a penalty when the record shows the deadhead car was placed in service without direction of or advice to the Carrier. As the Carrier had no information that the service of a conductor was needed, it of course had no opportunity to comply with Rule 64 (a), and the claim should have been denied.

/s/ R. H. Allison
/s/ A. H. Jones
/s/ C. C. Cook
/s/ C. P. Dugan
/s/ R. F. Ray