

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

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**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 C. E. Hughes and B. M. Slater, that Rules 1, 20, 25, 26, 31, 55 and 56 of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company, effective December 1, 1936, were violated when these conductors were arbitrarily removed from their regular assignment in Lines 1470 and 5476, and 1470 and 5475, and Lines 1138 and 1471, and that conductors should be restored to these assignments, and that Conductors Hughes, Slater and any others withheld from these assignments, should be compensated for all time lost because of being withheld on and after November 1, 1942.

**EMPLOYES' STATEMENT OF FACTS:** There is in evidence an agreement between The Pullman Company and Conductors in the Service of The Pullman Company dated December 1, 1936. This dispute has been progressed in accordance with the Agreement. Decision of the highest officer designated for that purpose, denying the claim, is attached as Exhibit No. 1.

This claim was pending and unadjusted at the time of negotiation and adoption of the current Agreement, effective September 1, 1945, which is also in evidence. Rule 64 of that Agreement reads:

"RULE 64. Conductor and Optional Operations. (a) 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, except as provided in paragraph (c) of this rule.

(b) The management shall have the option of operating conductors, porters in charge or attendants in charge, interchangeably, from time to time, on all trains carrying one Pullman car, either sleeping or parlor, in service; except with respect to certain conductor operations as specifically covered in the Memorandum of Understanding signed at Chicago, Illinois, August 8, 1945.

(c) The management shall have the option of operating conductors, porters in charge or attendants in charge, interchangeably, from time to time, on all trains where there is a combined service movement of two Pullman cars of any type in which sleeping or seat space is sold, such as a sleeping and a parlor car, or two sleeping or two parlor cars, having one or both terminals different, and such combined movement is for a period of less than 5 hours, railroad scheduled time.

standing each of the claims was discussed in detail and settlement of these claims decided upon. Proof of the statement that settlement of these claims constituted disposition of all outstanding claims and hence barred from future consideration any claims not presented for settlement is found in the statement of Messrs. Leach, Lary, Wendt and Davis, attached as Exhibit N.

Although Mr. Vroman, one of the members of Management's conference committee, is not a signatory to the attached Exhibit N because of his having retired from the service of The Pullman Company in the latter part of 1946, evidence of the fact that he likewise understood that the settlement of the claims submitted by Mr. Wise disposed of all outstanding claims is found in his letter to Mr. Wise, dated April 29, 1946, a copy of which is attached as Exhibit O. It will be noted from this letter that Mr. Vroman declined to consider on appeal the claim presented in behalf of Conductor C. P. Gannon of the Chicago Northern District on the grounds it was not included in the list of outstanding claims presented by Mr. Wise for settlement on August 25, 1945, and consequently was barred from consideration.

The Organization cannot successfully contend that the instant claim is one of the one or two minor claims which might have been overlooked by Mr. Wise at the time he prepared his list of claims for submission to Management's conference committee. In the first place, this claim involves the operation of porters in charge, and Mr. Wise in the meeting of August 25, 1945, specifically stated that the claims which he might have overlooked were not porter-in-charge cases. Additionally, a claim of this nature cannot be considered a minor claim. Finally, when Mr. Wise wrote to Mr. H. R. Lary on February 20, 1946, requesting settlement of the claim, he did not state that this was one of the minor claims to which he referred. Indeed, the record in this dispute contains no correspondence whatever from Mr. Wise taking issue with the statements contained in Mr. Lary's letter of April 12, 1946, concerning his understanding regarding the settlement of the claims which had arisen under the old Agreement. In fact, Mr. Wise in subsequent discussions with Management representatives admitted that he had agreed that the settlement of August 25, 1945, satisfactorily disposed of all outstanding porter-in-charge cases.

Clearly, the General Chairman of the Order of Railway Conductors, Pullman System, is not only in error in progressing the instant claim to the Third Division but is, as well, attempting a thoroughly unprincipled repudiation of his own agreement. The Company is astonished that General Chairman Wise would appeal this case to the Board in complete disregard of his agreement with Management that the settlement of the cases submitted by him for consideration in August, 1945, would dispose of all outstanding claims. For the Board to allow this case to be considered at this late date in disregard of the agreement between Mr. Wise and the Company would be to undermine the Company's efforts to work out with the Organization on the property the solution to claims and would in the future discourage any attempt at the settlement of such claims.

Conclusively, the conductors' Organization should be held to its agreement with Management regarding the disposition of claims arising under the 1936 Agreement, and the instant claim should be dismissed by the Board.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is another chapter in the long-drawn-out controversy over the practice of substituting porters-in-charge for Pullman conductors. See Awards Nos. 779, 1461, 1462, 1463, 1464, 1465 and 1883. In Award No. 779 this Board urged the parties thereto to reach some agreement in settlement of this problem.

Petitioner in this claim charges that the Pullman conductors were removed from their regularly assigned lines and porters were assigned to do the conductor work. This claim was filed with Carrier on November 11, 1942 and finally denied by it after appeal on April 13, 1943. It arose under the Agreement of December 1, 1936.

The parties made a new agreement effective September 1, 1945, but signed it on August 8, 1945. In order to dispose of outstanding claims, some similar to this one, which had been filed under the old agreement the parties met on August 25, 1945 and disposed of thirty-nine outstanding claims set out on a list prepared and presented by Petitioner's General Chairman, and considered seven additional claims which had not been included in the prepared list. The instant claim, although outstanding, was omitted from such list and was not considered.

Carrier contends that Petitioner is in effect barred from now prosecuting it before the Board because of the alleged understanding of the parties that the list of claims prepared and submitted by Petitioner and disposed of by the parties "included all pending claims with the possible exception of one or two minor claims."

It is undisputed that the purpose of the meeting was to consider the outstanding claims under the old agreement and to dispose of them prior to the effective date of the new Agreement. The instant claim had been filed with Carrier, considered both originally and on appeal, and was outstanding and undisposed of. So it was properly subject to consideration and settlement at the conference of August 25, 1945. The fact the General Chairman failed to include it on the prepared list does not now prevent its consideration by the Board. Carrier was equally charged with knowledge of it because it had been duly filed and progressed through appeal to the assistant to the Vice-President. The understanding between the parties was "to work out the settlement of all outstanding claims" so as to begin under the new agreement with a "clean slate". Under such understanding the inadvertent omission in presenting for consideration an outstanding claim of which Carrier had notice may not be held to bar its later prosecution before this Board.

In the recent Award No. 3846 this Board questioned the validity of the effect of Carrier's view of the understanding, namely that the General Chairman had sole authority to agree to abandon a current outstanding claim by omitting to list it for consideration. That award leaves the inference that an outstanding current claim should have at least been submitted for consideration and settlement regardless of the possible final decision on it.

Under the circumstances it follows that the claim must be sustained for the period the December 1, 1936 agreement was effective.

**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 violated the Agreement.

#### AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois this 7th day of June, 1948.