

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 W. O. Murphy of the Kansas City District, that The Pullman Company violated Rule 31 of the agreement between The Pullman Company and its Conductors, effective September 1, 1945, when on or about January 27, 1947, they declined to schedule Sunday as a relief day each week in Line 245, Rock Island Trains Nos. 16-17, between Kansas City and Minneapolis, as per the request of Conductor Murphy, the senior conductor of the Kansas City District.

Claim is made that Conductor Murphy should be compensated for each Sunday on which he was required to work in this line as provided in Rule 24 and that he be compensated on the basis of held-for-service time, as provided in Rule 9 for Tuesday of each week, which he was required to take as a relief day, in addition to all other earnings for the month.

Claim is made that Sunday of each week should have been scheduled as a relief day in Line 245.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between The Pullman Company and Conductors in its service, effective September 1, 1945; also a "Memorandum of Understanding", subject: "Compensation for Wage Loss", dated August 8, 1945, and 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.

Rule 31, "Bulletining of Runs", reads in part as follows:

"(a) New runs, temporary runs, each side of a run that has preferred sides, vacancies (except as provided in Question and Answer 1), and seasonal runs known to be of more than 31 days' duration shall be promptly bulletined for a period of 10 days in the district where they occur. Conductors desiring to bid for such runs shall file their applications with the designated official within the time during which they are posted, and assignments shall be made within 5 days thereafter on the basis of seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. Conductors bidding on more than one bulletined run shall specify in their applications their first choice, second choice, etc.

"The conductors who have been assigned to the run shall be placed in it in seniority order following the expiration of layover

his layover. The relief man operating in Line 245 went out on Tuesday, the scheduled relief day in the operation of the Line. The extra relief day for the Thursday-Sunday departure of the Line logically fell on Wednesday. Clearly, Conductor Murphy was not being held for service by Management inasmuch as he was on his scheduled relief day, for which period he was being credited and paid.

The Company has herein shown that the operation in question was set up and awarded in complete conformity with the provisions of Rule 31. Further, we have shown that Conductor Murphy is not entitled to be compensated in addition to all other earnings for the month for each Sunday he performed in Line 245 in regular assignment. Also, the Company has shown that Murphy at no time was held at home terminal beyond the expiration of his regularly-established layover or relief day. Conclusively, Conductor Murphy has been properly paid for the period in question. The claim should be denied.

Exhibits Not Reproduced.

OPINION OF BOARD: Prior to the establishment of the Conductor operation designated as Line 245 as a preferred side operation, it was a 3-1/3 man assignment. The Conductors in the Line operated between Kansas City and Minneapolis on Rock Island Trains Nos. 16-17. Due to the fact that these trains often arrived late at both terminals, the Company increased the number of Conductors required in the operation to 3 1/2. This also gave the Conductors an additional 24 hours relief after two round trips instead of after three round trips as formerly. With the addition of the 1/6 man to the assignment, Line 245 became a preferred side run having layover and additional relief day on the same days each week.

Rule 31, current Agreement, requires the bulletining of each of the three sides of the run. The Carrier bulletined the three sides of the operation with departures on Wednesday and Saturday, Thursday and Sunday, and Friday and Monday. Conductor W. O. Murphy bid in the side with Thursday and Sunday departures with Tuesday (Wednesday?) as his additional relief day. Conductor Murphy was the senior conductor bidding on the run and was entitled to all the rights of a senior Conductor. In an attempt to exercise his seniority, he accompanied his bid with a request that the established relief day be changed to Sunday. The Carrier declined the request and the Organization contends that this is a violation of the Agreement.

The applicable portion of Rule 31 is:

"(a) New runs, temporary runs, each side of a run that has preferred sides, vacancies (except as provided in Question and Answer 1), and seasonal runs known to be of more than 31 days' duration shall be promptly bulletined for a period of 10 days in the district where they occur. Conductors desiring to bid for such runs shall file their applications with the designated official within the time during which they are posted, and assignments shall be made within 5 days thereafter on the basis of seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. Conductors bidding on more than one bulletined run shall specify in their applications their first choice, second choice, etc.

"The conductors who have been assigned to the run shall be placed in it in seniority order following the expiration of layover from preceding trip. The management, however, has the right to place the conductor with the least amount of unexpired layover in the run, prior to the expiration of his layover, if the conductor is agreeable, provided the layovers of other conductors assigned to the run have not expired. A conductor placed in the run prior to the expiration of his layover shall be compensated for such service as provided in Rule 24."

The question here presented, reduced to a minimum of words is: Does the senior Conductor bidding on one side of a run that has preferred sides, have the right because of his seniority to designate his relief day? We answer in the negative.

• The bulletining of runs, including those with preferred sides, is the function of management. When once established by bulletin, the senior employe may then exercise his seniority over junior employes but he cannot exercise it to deprive management of its functional attributes. The Organization contends that it is a matter of no interest to the Carrier and that its failure to recognize the request of the senior employe constitutes arbitrary action. Contrary to the arguments of the Organization, we think the Carrier does have an interest in maintaining its unqualified right to bulletin runs as it sees fit, except of course, where the Agreement limits its action.

We think the Carrier has the right to designate relief days in order to integrate them with relief days on other runs so as to economize in the use of regular relief men. We think Carrier has the right to arrange relief days in such manner as will best meet operating convenience or necessity and comply with agreement rules. These are matters of management and not of seniority between employes. We find nothing in the agreement which deprives Management of this function or which assigns it to anyone else. The sides of the run as bulletined violated no provision of the agreement. Conductor Murphy as the senior Conductor could make his choice of sides. This he has done and the Carrier has assigned him to the one of his choice. This is all that seniority affords him under the bulletin.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1948.