

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and on behalf of Sleeping and Parlor Car conductors in the employe of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and governed by Schedule of Rules Governing Rates of Pay, Hours of Service and Working Conditions of Sleeping and Parlor Car Conductors, effective August 1, 1943:

1. That rules 20, 21, 25, 26, 29 and 32 of the above Agreement were violated when on June 29, 1947, a new train known as the "Olympian Hiawatha", carrying three touralux sleeping cars, was put in service in each direction between Chicago, Illinois, and Tacoma, Washington, and individuals, who do not hold seniority as Sleeping and Parlor Car conductor were used to perform Sleeping and Parlor Car conductor service.

2. That this sleeping and parlor car conductor run on the train known as the "Olympian Hiawatha" should have been bulletined as provided in Rule 29 of the Agreement as of the date it was initially established.

3. That the extra conductor entitled to make each trip between Chicago and Tacoma, in each direction, from June 29, 1947, and subsequent dates to and including the expiration of the bulletining and assignment period, be compensated for any service of which he was deprived due to being withheld from operation of this run.

4. That the conductors (Conductor M. R. Hays, et al) who were found to be entitled to assignment to this run, by virtue of their seniority, following close of the bulletining period on or about July 24, 1947, be compensated for each trip between Chicago and Tacoma, in each direction, that they were denied the right to operate in this run subsequent to the date regular assignments should have been made, on or about July 14, 1947.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the sleeping and parlor car conductors in its service, bearing effective date of August 1, 1943. 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.

The essential facts in this case are as follows:

Effective June 29, 1947, a new train designated "The Olympian Hiawatha" was placed in service between Chicago and Tacoma by the Chicago,

all employe assignments on the new train, inclusive of the Pullman conductor in charge of the two standard Pullman cars, represented additional service.

The Carrier asserts that no sleeping car conductor was in any way affected by the use of porters-in-charge on the Touralux cars during the period involved in this claim. By the inauguration of that new train, no sleeping or parlor car conductor assignment or service was in any way affected. On June 20th, 1947, with the inauguration of the new train, there was just as much sleeping and parlor car service available to the sleeping car conductors on this property as there was available to them previously.

To emphasize this point we should like to add that when it was decided by the Management, after the new train had been operating a few days, that the requirements of the service would best be met by the use of a sleeping car conductor between Chicago, Illinois and Minneapolis, Minnesota and between Spokane, Washington and Tacoma, Washington, and also later when it was considered that the requirements of the service justified the use of the sleeping car conductor through between Chicago, Illinois and Tacoma, Washington, it was necessary to employ additional sleeping car conductors. An examination of the sleeping car conductors' roster shows no conductor employed from January 4th, 1947 to July 1st, 1947 but, because of the additional sleeping car conductor service on the new trains, the roster shows eight (8) additional sleeping car conductors employed during the month of July, 1947.

The Organization has also cited Third Division Award 779. The opinion of your Honorable Board in that case covers three dockets: PC-698, PC-699 and PC-708. The circumstances surrounding the dispute covered by Dockets PC-698 and PC-699 also involve the question of substitution of a porter-in-charge for a sleeping car conductor. Again the Carrier states that no substitution is involved in the instant dispute. The case covered by Docket PC-708, which pertains to new service, was remanded to the parties.

In keeping with the principle announced in Award 779 the Carrier desires to advise that there is in operation on several trains sleeping and parlor cars which are manned by porters-in-charge and this practice was in effect for many years previous to August 1st, 1948.

As an example, Train 11 from Chicago regularly handles a sleeping car for Rapid City with porter-in-charge. That train also handles a parlor car for Madison, Wisconsin with porter-in-charge. Occasionally an extra parlor car is assigned to Train 11 for Madison with porter-in-charge unless the extra parlor car is occasioned by movement of a special party deemed to require the services of a parlor car conductor. In other words, there are many instances where three Milwaukee-owned sleeping and parlor cars are handled on Train 11, each with a porter-in-charge and that practice has been in effect for many years.

Train 22 from Mason City, Iowa regularly handles a Milwaukee-owned sleeping car originating at Rapid City for Chicago; one Milwaukee-owned sleeping car originating at Mason City for Chicago and one standard Pullman sleeping car originating at Minneapolis for Chicago. A Pullman conductor is used on the train between Lone Rock, Wisconsin and Chicago, Illinois. A porter-in-charge is used on each car between the originating point and Lone Rock, Wisconsin. Various other trains handle one, two and occasionally more than two sleeping or parlor cars, each with a porter-in-charge. In the instant dispute there was a Pullman sleeping car conductor on the Olympian-Hiawatha and in addition a porter was in charge of each of the three Touralux cars.

It is the Carrier's contention that Third Division Award 2743 is more applicable in the instant dispute. In that Award it was stated: "This record shows that porters-in-charge of parlor and sleeping cars have been used intermittently for over thirty-five (35) years and this fact must have been known to the Organization when they contracted, and therefore, they must

be deemed to have acquiesced in its continuance. Moreover, this Organization knew of the interpretation placed upon the identical Agreement by this Board in Award 779 to Award 1883 involving this question and is presumed to have entered into this Agreement with the knowledge of that interpretation. It follows that the Carrier has the right to use Porters-in-Charge on this train unless conditions have changed in accordance with the criteria above quoted from Award No. 779.

From the above examples the Carrier has shown that conditions have not changed because there have been no changes in the practice concerning the use of porters-in-charge, a practice which has existed for many years and was covered by the Agreement of June 1st, 1943 with the Brotherhood of Sleeping Car Porters at the time the Agreement of August 1st, 1943 was negotiated with the sleeping car conductors.

It is the Carrier's position:

1. That there is no rule in the Sleeping Car Conductors' Schedule which required the assignment of a sleeping car conductor to the Touralux cars handled in the new Olympian-Hiawatha train, but that to the contrary, the Carrier properly, under the Schedule rules with the Brotherhood of Sleeping Car Porters (June 1st, 1943) and with the Order of Railway Conductors (August 1st, 1943) determined whether or not the requirements of the service were such as to make necessary the use of a porter-in-charge or a sleeping car conductor in connection with new service and that there was no violation of the latter agreement when it was determined, in this instance, by the Management that the requirements of the service would be fully met by the use of porters-in-charge.

2. That the schedule of rules, inclusive of those upon which this claim is based, would apply to a sleeping car conductor in service but have no application where there would be no sleeping car conductor runs or assignments.

3. That the Organization has not set forth any rules which required the assignment of a sleeping car conductor to the Touralux cars on the Olympian-Hiawatha trains.

4. That the contention of the Organization in this instance is tantamount to saying that the Organization, rather than the Carrier, shall be the judge as to whether or not a new sleeping car operation shall be handled by a sleeping car conductor or a porter-in-charge and we contend that the agreement between the Carrier and the sleeping car conductors does not grant the Organization that privilege.

5. That there has been no violation of the sleeping car conductors' agreement by the use of porters-in-charge on the Olympian-Hiawatha trains during the period involved in this dispute and the Carrier, therefore, respectfully asks that the claim be declined.

Exhibits Not Reproduced.

OPINION OF BOARD: On or about June 29, 1947, the Carrier put into service between Chicago, Illinois, and Tacoma, Washington, a new train, carrying among other passenger equipment, including auxiliary service, three Touralux sleeping cars. Two standard Pullman sleeping cars were also carried, manned by porters and a Pullman conductor. The train was called the "Olympian-Hiawatha". When the train was first planned, it was contemplated that the Carrier, in addition to the three Touralux sleeping cars, would put into the train two Carrier owned standard sleeping cars, and put all five sleeping cars in charge of a sleeping car conductor. It was unable to carry out its plan with respect to the standard sleeping cars, and, in lieu thereof, and on a temporary basis, the two standard Pullman sleeping cars were contracted for and used, with a Pullman conductor in charge.

In these circumstances, the Carrier conceived the idea that the three Touralux cars could be manned by Porters-in-Charge, a position recognized in the Carrier's Agreement with the Brotherhood of Sleeping Car Porters,

effective June 1, 1943, but which, of course, has no binding effect on the Order of Railway Conductors or on its Agreement. The three cars were put in charge of Porters-in-Charge, but from the beginning the plan did not work well. According to Carrier's submission, from June 29 through July 2, 1947, the three Touralux cars were each manned by a Porter-in-Charge, from Chicago to Tacoma. Beginning July 2, and through July 14, 1947, the three cars were manned by a Porter-in-Charge, with a Milwaukee Sleeping Car Conductor in charge between Chicago and Minneapolis, Minnesota, and between Spokane and Tacoma, Washington, leaving the run between Minneapolis and Spokane in the sole charge of Porters-in-Charge. Beginning with July 15, 1947, the three Touralux sleeping cars have been in charge of a Milwaukee Sleeping Car Conductor from Chicago to Tacoma and return. On July 14, 1947, the position of Conductor was bulletined, and in the meantime the run was serviced from extra available Sleeping Car Conductors. The controversy ended when the position was bid in, on or about July 29, 1947. In substance, the claim is that the Touralux sleeping cars should have been manned by Milwaukee Sleeping Car Conductors from the date they were put in service on June 29, 1947, and that extra men, entitled to the work, be compensated for work lost up to the date when the position should have been regularly assigned at the end of the bulletin period, and regularly assigned men thereafter, up to the date when the said cars were regularly manned by Milwaukee Sleeping Car Conductors.

The current Agreement between the Carrier on the one hand, and the Petitioner, Order of Railway Conductors of America, Pullman System, on the other, became effective on and after August 1, 1943. At that time there was an agreement in effect between the Pullman Company and the Order of Railway Conductors of America, and Conductors in Pullman service, which was afterwards amended in certain particulars, and as now existing became effective on September 1, 1945. And on August 1, 1943, there was an agreement between the Carrier herein and the Brotherhood of Sleeping Car Porters, embracing Porters-in-Charge, which became effective on June 1, 1943. These agreements with the Pullman Company and the Porters' Union are not claimed to be in any way binding on the petitioner herein, but many awards are cited in which reference is made to these agreements, and analogies attempted.

It cannot be denied that Porter-in-Charge work exists on all railroads, and is a character of work which, in many instances, embraces work which Sleeping Car Conductors customarily do. So well established is this work, that carriers over the country have made agreements with the organization representing their interests. Porters work with Sleeping Car Conductors, and knowledge of their work and of their agreement with the Carrier can reasonably be attributed to such conductors. All this being true, we cannot accept the contention of the Petitioner that in all cases and situations, Sleeping Car Conductors are entitled, under their agreement, to do all such conductor work. The practice, over many years, of using Porters-in-Charge in doing some part of work which conductors usually perform, is too well established, and too well supported by the Awards of this Division, to be any longer in question. This being true, the scope of the Agreement between Petitioner and the Carrier must be construed, not as necessarily covering all conductor's work, but as covering such conductor work as comes within the fair scope of the Agreement, considered in connection with other employees of the Carrier, whose work is closely connected with conductor's work, and, perhaps, just as essential to efficient service to the public.

One of the first awards of this Division to deal with this question was Award No. 779. There, the contention of the Carrier that it had the unlimited right to use Porters-in-Charge at will was denied, and yet it was recognized that Sleeping Car Conductors were not always entitled to perform all conductor work. These principles have been upheld by many subsequent awards of this Division, among which are: Awards Nos. 909, 1461-5, 1883, 2743. In Awards 2151-2 of this Division claims of Pullman Conductors to have conductor's work on a new type train in an experimental run were sustained. All awards cited covered claims originating in Pullman service,

except Award No. 2743. That was a case where Porters-in-Charge were used on cars operated by the Carrier involved herein, and partly on the same road, at the date of the Agreement of August 1, 1943, and the Sleeping Car Conductors claimed the work as their own, under said Agreement. The claim was denied, not because it was believed that the work of Porters-in-Charge on said cars had become frozen as such, but for the following reasons stated in the opinion:

"This record shows that Porters-in-Charge of parlor and sleeping cars have been used intermittently for over thirty-five years, and this fact must have been known to the Organization when they contracted, and therefore they must be deemed to have acquiesced in its continuance. Moreover, this Organization knew of the interpretation placed upon the identical agreement by this Board in Award 779 to 1883 involving this question and is presumed to have entered into this Agreement with the knowledge of that interpretation * * *"

There is no rule in the current Agreement which provides when, and under what conditions, Porters-in-Charge may or may not be used. That they are expected to be used is explicit in the Porters' Agreement, of which the Petitioner must have had knowledge. Award No. 779 attempts to set up a criteria for the determination of this question, including "other instances of comparable lines on which substitutions have been made; the history of the contested as well as the compared lines; changes in traffic volume." The Pullman Agreement now covers the question, but did not always do so, and cases arising out of the former Pullman Agreement are only useful by way of analogy. Statements that Sleeping Car Conductors are now attempting to negotiate an agreement with the Carrier along the same general lines as that obtained by Pullman Conductors, cannot have any bearing on the present dispute. The whole matter settles down to this: The parties should get together and settle on a definite rule, as was suggested in Award No. 779, but if, as seems quite probable, they will not do so, each case presented will have to be decided on the facts of that particular case. All admit that Porters-in-Charge may be used in operating parlor and sleeping cars under certain conditions; all admit that, generally, the handling of parlor and sleeping cars is work belonging to Sleeping Car Conductors; the question is where does the work of one end, and the other begin. There is, apparently, no answer to this question in the awards of this Division.

Coming to the concrete question here involved, and dealing with it on the facts presented, we are of the opinion that when the Carrier began the use and operation of the three Touralux cars, aforesaid, without using a Sleeping Car Conductor, and when it placed Porters-in-Charge thereon, it violated the true intent, spirit and meaning of the current Agreement. Carrier admits that it was originally contemplated that a Sleeping Car Conductor would be put in charge of the three Touralux cars and two standard carrier owned sleeping cars, and it was only when the standard equipment could not be obtained, and the temporary arrangement made to use two Pullman cars, with a Pullman Conductor in charge, that the plan to use Porters-in-Charge was put into effect. If a Sleeping Car Conductor was believed necessary in the original plan, it was necessary under the changed plan, and the dropping of the two standard Carrier owned sleeping cars did not, in our opinion, materially lessen the need for a Sleeping Car Conductor, on three cars operating the long distances between Chicago and Tacoma. It only required three days for the Carrier to reach the conclusion that its second plan was a mistaken one, and only fifteen days to abandon it in its entirety. We are of the opinion that a fair application of the Agreement to the situation existing when the new train "Olympian Hiawatha" was put in service on June 29, 1947, required the assignment of a Sleeping Car Conductor to take charge of the three Touralux sleeping cars, and that the Conductors entitled to perform that work should be compensated for any time lost, by reason of Carrier's action in not giving them said work, up to the date the work was bulletined and a regular assignment made.

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 Carrier violated Agreement as charged.

AWARD

Claims (1, 2, 3 and 4) sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of July, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3991

DOCKET PC-3990

NAME OF ORGANIZATION: The Order of Railway Conductors,
Pullman System.

NAME OF CARRIER: Chicago, Milwaukee, St. Paul and Pacific
Railroad Company.

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

On examining the opinion of the Board making said award, we find that it contains the following language:

"We are of the opinion that a fair application of the Agreement to the situation existing when the new train 'Olympian Hiawatha' was put in service on June 29, 1947, required the assignment of a Sleeping Car Conductor to take charge of the three Touralux sleeping cars, and that the Conductors entitled to perform that work should be compensated for any time lost, by reason of Carrier's action in not giving them said work, up to the date the work was bulletined and a regular assignment made."

We think the expression "time lost" should be treated as meaning "wages lost", and in turn, "wages lost" should be construed to include not only compensation for loss of work but any difference between what the conductor would have received had he been employed as a conductor on the Olympian Hiawatha, and what he may have received from other employment for the Carrier during the period involved. We do not think the award should be construed as allowing double payment of wages for any time when the conductors were employed by the Carrier in other kinds of work.

Referee Fred L. Fox, who sat with the Division as a Member when Award No. 3991 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of February, 1949.

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