Award No. 5211

Docket No. PC-5173

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee.

PARTIES TO DISPUTE:

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

ORDER OF RAILWAY CONDUCTORS

STATEMENT OF CLAIM: 1. That Rules 24, 25, 28, 35 and 52 of the above Agreement were violated when on January 1, 1949, two or more Milwaukee owned Sleeping Cars occupied by passengers were operated on CMStP&P Railroad Trains Nos. 1 and 4 from Chicago to Minneapolis and from Minneapolis to Chicago and individuals who do not hold seniority as Sleeping and Parlor Car conductors were assigned to operate these cars.

2. That this Sleeping and Parlor Car conductor run on Trains Nos. 1 and 4 between Chicago and Minneapolis should have been bulletined, as provided in Rule 28 of the Agreement, as of January 1, 1949.

3. That Extra Conductor J. J. Lucasey who holds seniority as a Milwaukee Sleeping and Parlor Car conductor should have been assigned as provided in Rule 35, to the Milwaukee owned cars on Train No. 1 on January 1, 1949, reporting Chicago 8:45 P. M., and returning from Minneapolis on Train No. 4, reporting Minneapolis 9:15 P. M. January 2, 1949.

(a) That Extra Conductor W. F. McGuire who holds seniority as a Milwaukee Sleeping and Parlor Car conductor should have been assigned as provided in Rule 35 to Milwaukee owned Sleeping Cars on Train No. 1 on January 2, 1949, reporting Chicago 8:45 P. M., returning from Minneapolis on Train No. 4, reporting Minneapolis 9:15 P. M. January 3, 1949.

4. That Extra Conductors Lucasey and McGuire, and other extra conductors entitled to make each trip between Chicago and Minneapolis, in each direction, from January 1, 1949, and subsequent dates to and including the expiration of bulletining and assignment period, be compensated for each trip, in each direction, they were deprived, due to being withheld, from operation of this run.

5. That the conductors (M. R. Hays, A. F. Grant, P. J. Basil, et al.) who are found to be entitled to assignment to this run, by virtue of their seniority, following the expiration of the bulletining and assignment period which expired on or about January 16, 1949, be compensated for each trip between Chicago and Minneapolis, in each direction, that they were denied the right to operate in this run.

CARRIER'S STATEMENT OF FACTS: The claim shown above was presented to the Carrier on January 25th, 1949 in a letter directed to

In this instance, conductors were deprived of the right to operate service to which their seniority entitled them to assignment, and they should be reimbursed for the loss sustained.

We respectfully request your honorable Board to sustain our claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants are Milwaukee Sleeping and Parlor Car Conductors who claim that, by reason of a failure to bulletin, they were enttiled to assignments, on Trains 1 and 4 known as the "Pioneer Limited", to new cars built and owned by Milwaukee but leased to Pullman in substitution for old cars owned and theretofore operated by Pullman.

On the Milwaukee Road both Pullman and Milwaukee sleeping cars are operated in service. The operation of Pullman sleeping cars is subject to an Agreement between the Pullman Company and the Order of Railway Conductors of America—Pullman System. And the operation of Milwaukee sleeping cars is subject to a separate Agreement between the Milwaukee Road and the Order of Railway Conductors of America.

A divided operation of sleeping cars on the Milwaukee Road has been in effect without interruption since 1927. Prior to May 21, 1927, the sleeping cars on the "Pioneer Limited" were owned and operated by Milwaukee. On May 21, 1927 Pullman sleeping cars were substituted for Milwaukee sleeping cars; and three Milwaukee sleeping car conductors were transferred to Pullman employment and to the Pullman roster. Ever since then only Pullman sleeping cars and three regularly assigned Pullman sleeping car conductors have operated on these trains.

Commencing November 15, 1948 Milwaukee commenced replacing the Pullman sleeping cars on the "Pioneer Limited" with new streamlined sleeping cars which had been built for Milwaukee and which were put under lease to the Pullman in perpetuation of the 1927 arrangement. The trains are operated as before, but under the lease, with three regularly assigned Pullman conductors.

The claims are based on Rule 52 (a) of the Milwaukee Agreement, which provides:

"RULE 52—CONDUCTORS AND OPTIONAL OPERATIONS.

(a) Milwaukee sleeping or parlor car conductors shall be operated on all trains while carrying, at the same time, more than one Milwaukee sleeping or parlor car, in service * * *."

The Pullman Agreement, Rule 64 (a) provides:

"RULE 64—CONDUCTORS 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 * * *."

Milwaukee Rule 38 provides:

"RULE 38. NEW SERVICE ACQUIRED FROM PULLMAN COMPANY.

When sleeping or parlor car service is taken over by the C.M.St.P.&P. RR. Company from the Pullman Company, the conductors taken over with such service shall retain their seniority rights in the lines acquired and shall begin to accumulate seniority rights, as provided in Rule 24, as of the date taken over by the C.M.St.P.&P. RR. Company. Conductors carried on the C.M.St.P.

&P. RR. Company. roster at the time of transfer shall begin to accumulate seniority rights over the service acquired as of the date of transfer."

Milwaukee Rule 24, so far as pertinent, provides:

"Q-1. What is the extent of seniority rights of a sleeping and parlor car conductor and now shall those rights be confined?

A-1. The seniority rights of a sleeping and parlor car conductor extend over the C. M. St. P. & P. RR. Co. System which comprises one seniority district."

First: Pullman Rule 64 was adopted pursuant to a recommendation of an Emergency Board in 1945; and Milwaukee Rule 52 was adopted pursuant to an award of an arbitration board (NMB Docket A2799) in 1948. In 1950 both the Carrier and the Organization proposed amendments to Pullman Rule 64 in such a way as to affect a disposition of this controversy, but another Emergency Board recommended a withdrawal of both proposals. Again, there is now pending a similar proposal by the Organization for amendment of the current Milwaukee Agreement.

Proposals for amendment of an agreement may throw light on what was meant by how it was sought to be amended. Sometimes a proposed amendment can be fairly taken as an admission by a party that its objective can be obtained only by a change in the meaning of the agreement; but just as often, perhaps, the proposal of an amendment is founded upon situations not contemplated when the agreement was adopted, or upon a conviction that, although the agreement is favorable, clarification is all that is needed.

We have before us the current proposal, the arbitration award and the 1950 Emergency Board Report. From them we are unable to draw any conclusions, one way or the other, from the various efforts to secure amendments of the Rule. This leaves us where these various boards left the parties: with Rule 52 (a) as it is now written.

Second: The language of both Rule 52 (a) and Rule 24, divorced from their setting, would lead to an assumption that the sleeping cars in dispute are covered, because they are now both owned and a part of the railroad operation of the Carrier. But words in an agreement have no meaning except in relation to an object; and ever since these Rules have been in effect, they have never been understood as having any application to that part of the railroad operation of Milwaukee which has been conducted by Pullman without interruption for over 20 years and under which rights have arisen from the Pullman Agreement. The sole change which provokes this controversy is a shift in ownership of the sleeping cars in question.

The common business of the Carrier and the Organization is railroad operation, and their Agreement covers that business and also the property employed in that business. The legal title to property may be vested in someone else; but if it is employed by the Carrier in the railroad operation, it is nevertheless covered by the Agreement between the Carrier and the Organization. Conversely, the legal title to property may be vested in the Carrier; but if it is not employed in the railroad operation, it is not covered by the Agreement between the Carrier and the Organization.

> "We think the mere fact of ownership of property by the Carrier is not sufficient ground for claim by the Organization of application of contract rights thereon." (Award 4783.)

So here, we are unable to conclude that Milwaukee's ownership of the sleeping cars in dispute is, standing alone, determinative of the Organization's claims under Rule 52 (a) and Rule 24. No aspect of the operation of these trains, only the change in ownership and the lease back to Pullman,

is urged by the Organization as a reason for changing the traditional method of assigning sleeping car conductors.

In view of the foregoing considerations, we are unable to conclude that the Agreement has been violated.

Third: The scope of this decision should be clearly understood. We affirm the precise holding in Award 4000; and nothing said here is intended to sanction the practice of farming out equipment through rental for special use in a way calculated to deprive the Carrier's conductors of the work guaranteed to them under their Agreement. Nor should sight be lost of the fact that the ownership by Milwaukee of the sleeping cars in dispute here, and the lease back to Pullman, was a mere physical substitution of new equipment which effected no changes whatsoever in the traditional details of operation.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of February, 1951.