

Award No. 5934

Docket No. PC-5812

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper—Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims that The Pullman Company violated Memorandum of Understanding Concerning Assignment of Extra Conductors and Rules 10, 22, 25 and 38 of the Agreement between The Pullman Company and Conductors in the service of The Pullman Company, when:

1. Under date of October 13, 1950, the Pullman Company failed to assign the available conductor of the Fort Worth District that was entitled to perform Pullman conductor work on Pullman cars Riderwood and St. Helena, from 12:00 Noon, October 13, to 12:00 Noon October 15, while occupied by passengers and their possessions in the Texas and Pacific Station, Fort Worth, Texas.
2. We now ask that the available Fort Worth District conductor entitled to the above assignment be credited and paid because of this violation.

The Preamble to the Agreement and Rules 65 and 66 are also involved.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in the service of The Pullman Company, dated September 1, 1945, revised January 1, 1948. This Rules' Agreement will be considered a part of this Statement of Facts. Various rules thereof may be referred to herein from time to time without quoting in full.

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.

The essential facts necessary to a determination of this dispute are as follows:

On September 15, 1950, Mr. W. T. Long, General Superintendent of Transportation for the Texas and Pacific Railroad, Dallas, Texas, wired Mr. Weinbrenner, District Superintendent, The Pullman Company, Fort Worth, Texas, as follows:

assignment of conductors thereto is a practice of many years standing. This practice, though known by the Organization to exist, has not been abrogated by any rule of the Agreement between The Pullman Company and its conductors. Under the circumstances, the practice has become a part of the working conditions of Pullman conductors. In order for the Board to now hold that conductors should have been assigned to the cars used in hotel service on October 13-15, 1950, the Board in effect would have to write a new rule into the Agreement between the parties. This the Board is without authority to do. The claim of the Organization is without merit and should be denied.

The Company affirms that all data submitted herewith in support of its position have heretofore been presented in substance to the employe or his representative and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Texas Hotel at Fort Worth, Texas leased two Pullman cars from the Carrier. The cars were used to handle overflow from the hotel during the State Fair and an important university football game.

The two cars leased were spotted in the Fort Worth Station from noon October 13, 1950 until noon Oct. 15, 1950.

The cars were fully equipped and each had a porter assigned.

No conductor was used.

The Pullman Company was paid on a per diem rental basis.

The Claimant contends that the Carrier violated Rules 10, 22, 25 and 38 of the Agreement when it failed to use a Pullman Conductor on the two cars. That by violating Rule 38 the seniority rights of the conductor available from the Fort Worth District were violated and therefore he should be paid as provided by Rules 10 and 22 of the Agreement.

The Carrier contends that Rule 64 is controlling and Rule 38 must be read in conjunction with it. That it was not necessary to have a Pullman conductor with these leased cars under Rule 64 of the Agreement.

We agree that Rule 38 must be read in conjunction with Rule 64. Rule 64 applies to extra men as well as regularly assigned men. Rule 64 provides as follows:

"(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.

"Under the foregoing paragraphs, (a) to (c), private cars shall not be considered for any purpose as sleeping or parlor cars.

"(d) The Management shall have the option of using conductors, porters in charge or attendants in charge, interchangeably, from time to time, for collecting Pullman tickets and cash fares for a car or cars operating on trains as provided in paragraphs (b) and (c) hereof, and for cars at outlying or passing points which will be in charge of a conductor leaving such points, except that a conductor will be used to collect Pullman tickets and cash fares at a passing point for two or more cars which are being loaded at the same time in the same station prior to attachment to through trains on which Pullman conductors are operated.

"(e) When passengers are permitted to occupy a car or cars in charge of a conductor beyond the scheduled arrival time at the foreign or home terminal of the conductor, he shall not be released from duty until the scheduled time the car or cars are to be vacated."

Rule 64 (a) provides for Pullman conductors on **all trains in service** where more than one Pullman car is used.

This last cited rule is specific in providing for the cars being in service in trains. In the instant case the two cars were not used at any time in a train, nor were passengers on the cars so as to require service to passengers as contemplated in Rule 10. The two Pullman cars were never used during the time here involved by passengers nor by any persons holding transportation tickets nor were tickets issued or cash collected by either the Railroad Company or the Pullman Company. The people using the cars were guests of the hotel, the space was rented by the hotel as hotel accommodations, the guests paid the hotel. The use of these two Pullman cars by the guests of the hotel was not such a use as required a Pullman conductor to perform station duty.

The rules of the Agreement contemplate the use of Pullman cars by passengers for transportation or those boarding for transportation or those having completed their trip and remaining on board for sleeping convenience. Rule 64 (a) contemplates cars in service in trains.

The record does not disclose any practice that would sustain this claim nor do the rules cover the use of the Pullman cars as here employed.

The Carrier was not required to use a Pullman conductor on the two cars involved in this case.

Rules 10, 22, 25 and 38 were not violated.

We cannot change or modify the rules as written; that is a matter for negotiation of the parties under Rule 66 and the Railway Labor Act.

The Rules were not violated.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of September, 1952.