Award No. 6069
Docket No. PC-6167

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Claim of the Order of Railway Conductors, Pullman System, for and in behalf of available extra conductors, Houston District, that:

1. During the period April 29 to May 31, 1951, inclusive, certain San Antonio District Conductors assigned to the conductor run on T&NO Trains Nos. 8 and 7, designated as Line 3497, were permitted to operate on T&NO Trains 171-172 between Houston and Galveston, Texas, Line 3493.

2. Available extra conductors, Houston District, be credited and paid under applicable rules of the Agreement for each such trip performed by San Antonio District Conductors between the dates April 29 to May 31, 1951, inclusive.

3. During the period April 29 to May 31, 1951, inclusive, certain San Antonio District Conductors assigned to Line 3497, were required to perform station duty, receive for cars on SP Train No. 6, including local Houston-New Orleans car, Line 3491, beginning at 8:30 P. M. in the Houston depot.

4. Available extra conductors, Houston District, be credited and paid under applicable rules of the Agreement for three hours and thirty minutes on each of the dates, April 29 to and including May 31, 1951.

5. Rules 10, 13, 22, 25 and 38 of the Agreement have been violated.

EMPLOYES' STATEMENT OF FACTS: 1. During the period involved in this dispute, Pullman Conductors assigned to Line 3497, San Antonio District, operated as follows:

a. Report at San Antonio for T&NO Train No. 8 to handle Pullman car operating in Line 3497 originating in San Antonio destined Houston where this train **including the car** terminated. (Exhibit No. 2.)

b. Report in Houston for T&NO Train No. 171 to handle Pullman car operating in Line 3493 (**New Orleans to Galveston**) from

been followed for many years. The practice of rating telegrams on the Super Chief had been in existence for at least seven years. We assume the Organization, acting as the Employes' representative, knew of the existence of such practices. But whether it did or not is immaterial. It is charged with knowledge of the working conditions existing at the time the Agreement was executed. If it is desired to have the practices abolished they should have been made subjects for negotiations and agreement. When a contract is negotiated and long existing practices are not abrogated or changed by its terms, such practices are deemed to have been within the contemplation of the parties and approved. Indeed, there is sound precedent for giving them the same force and effect as if they had been incorporated within the terms of the contract itself. See Awards 2436, 1397, 1252, 507. What has just been stated is all the more true when—as here—in addition to long continued acquiescence prior to the filing of a claim the parties have since revised the working Agreement, then in force and effect, without abrogating or doing away with the practices of which they then and now complain."

As stated above, the operation of San Antonio District conductors between San Antonio and Galveston in Line 3497 has been in effect as far back as 1936. During the period January 1, 1936, to June 13, 1951, the date the instant claim was presented, The Pullman Company and its conductors have revised their Agreement on four occasions; namely, December 1, 1936, September 1, 1945, January 1, 1948, and January 1, 1951. In none of those revisions did the parties make any provision which expressly or by implication made it necessary that the Company discontinue the operation of San Antonio District conductors in Line 3497 between San Antonio and Galveston and in its place substitute an operation of San Antonio conductors between San Antonio and Houston and an operation of Houston District conductors between Houston and Galveston.

CONCLUSION

The record in this dispute supports the position of the Company. The Company has shown that none of the rules cited by the Organization support its position in this dispute. The Company has further shown that the operation in question was in effect for many years without protest from the conductors' Organization. This Board has repeatedly held that the burden of showing a violation of the Agreement rests with the Organization alleging the violation. In this dispute the Organization has failed to meet that burden. This Board in its **OPINION** in Award 4758 made the following statement:

> "The Claimant in coming before this Board assumes the burden of presenting a theory which, when supported by the facts, will entitle him to prevail. The Board cannot accept the burden of finding a reason to grant relief when the Claimant fails to make out a case. See Awards Nos. 4011, 3523, 3477, 2577."

The Organization in this dispute has advanced no theory supported by facts which would entitle it to prevail. The claim is without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The factual situation herein involved is the same as that involved in Docket PC-6147 on which our Award 6029 is based only here the claim presented is made on behalf of available extra conductors of the Houston District.

The first claim involves the propriety of Carrier assigning to San Antonio District conductors, as a part of their assignment, service on Trains Nos. 171-172, New Orleans to Galveston, in Line No. 3493 from Houston to Galveston and return.

The second claim is entirely dependent on the first for if Carrier was correct in making up the assignment of the San Antonio District Conductors then their receiving for cars on SP Train No. 6 in the Houston depot was a part of their assignment and permissible under Rule 10 (c). If not, then work from 8:30 P. M. to 9:15 P. M. came under Rule 38 and was payable according to 10 (a).

Both of these contentions were determined adversely to the Organization in Award 6029. Therein we held as to the first contention that: "We find no rule in the Agreement which supports that proposition and, since this same assignment has been in effect most of the time since 1936, it may not properly be said that past practice supports it." As to the second, we said: "Such service was performed within the spread of their assignment and hence under Rule 10 (c) constitutes service which may be required without additional credit or pay."

These holdings are here controlling and in view thereof we find the claims to be without merit.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier has not violated the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.