

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, 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 certain Philadelphia District Conductors that:

1. Rule 65 of the Agreement between the Pullman Company and its Conductors (effective January 1, 1951) has been and is being violated by the Pullman Company in connection with the operation of Pullman Conductors on Pennsylvania Railroad trains and specifically on PRR Trains 35-36.
2. The Pullman Company has admitted and confirmed its commission of this violation of Rule 65.
3. The Pullman Company be required to take immediate action to bring itself into compliance with its admitted contractual obligations to Pullman Conductors operating on Pennsylvania Railroad trains.

EMPLOYES' STATEMENT OF FACTS:

I.

A contract exists between the Pullman Company and its Conductors. This contract is titled "Agreement between the Pullman Company and Conductors in the Service of the Pullman Company represented by the Order of Railway Conductors of America, effective January 1, 1951."

II.

This contract between the parties includes the following provision:

"RULE 65. Office Space for Conductors.

Conductors in charge of 5 or more cars shall be provided suitable desk space on the train for their exclusive use to compile required reports. A section table in a section shall be considered suitable desk space except that the conductor shall be privileged to use a room

anticipated or expected when the provisions of Rule 65 were accepted into the contract.

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: In this docket we are petitioned to give effect to Rule 65 of the Agreement between The Pullman Company and its conductors represented by the Order of Railway Conductors. The rule is as follows:

"Office Space for Conductors. Conductors in charge of 5 or more cars shall be provided suitable desk space on the train for their exclusive use to compile required reports. A section table in a section shall be considered suitable desk space except that the conductor shall be privileged to use a room for office space, if one is available, between the hours of 6 P. M. and 8 A. M.

Q-1. On trains where two conductors are operated, shall separate office space be set aside for each?

A-1. No. One section or one room shall be provided and the conductors will share it as office space. Such office space shall be located in a car conveniently accessible to both conductors.

Q-2. Does this Rule contemplate that a conductor shall hold a room off sale for use between 6 P. M. and 8 A. M.?

A-2. No."

This rule can be paraphrased as follows: Rule 65 . . . Conductors in charge of 5 or more cars shall be provided . . . space . . . for their exclusive use to compile required reports. Q-1 & A-1 . . . Where two conductors are operated . . . separate office space shall . . . not . . . be set aside for each. Q-2 & A-2 . . . Conductors shall . . . not . . . hold a room off sale for use between 6 P. M. and 8 A. M.

The simple meaning of the language employed is that the space "shall be provided". This is mandatory language. Under Q-1 and A-1, the use of the words "be set aside" is proof that the parties contemplated such action in certain instances.

From the docket itself it appears that other railroads have cooperated with The Pullman Company in placing the rule into effect and it is also found that the Pennsylvania Railroad refuses to "meet the wishes" of The Pullman Company. This refusal, together with all the other evidence in the docket, amply supports the union contention that the rule has been violated and this Division so finds.

The docket does not contain the factual details explaining how the office space is arranged for on the other cooperating carriers. We do have before us considerable argument on when The Pullman Company takes charge of the Pullman cars; but we cannot say there is conclusive proof on who is responsible, at what particular time, for the assignment of space.

The Pullman Company has contracted that the space be provided and that two spaces need not be set aside where there are two conductors. The Pullman Company in merely expressing its wishes to the Pennsylvania Railroad has not discharged its contractual responsibility, if as a result no space is provided the conductors. It is our opinion that the rule has been violated as shown by the particular instances cited on the trains in question.

We cannot say with certainty how widespread the violations occur nor whether they are certain to be repeated. However, we are of the opinion that the Organization is within its rights in claiming space for its conductors "shall be provided" and if likely to be necessary, even that space be "set aside", as the parties contemplated when the rule was written.

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 Rule 65 has been violated at the times alleged and that the rule as written and contemplated should be followed by the parties henceforth.

AWARD

Claim sustained in conformity with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST. (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of October, 1953.