

Award No. 6623
Docket No. PC-6640

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE PULLMAN COMPANY

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

STATEMENT OF CLAIM: "I contend that The Pullman Company violated Rules 25, 38 and 64 of the Agreement on March 24, 26, 28, 1949 and each second day thereafter so long as this practice continues when they failed and do fail to assign a conductor to Santa Fe train No. 12 from Kansas City to Chicago to handle car of Line 4018 and Pullman car Hakatai, which was used and is now being used as a Santa Fe parlor car on this train.

In a recent conversation with you about this matter, you said that the reason this car is being used as a Santa Fe parlor car is that the regular Santa Fe parlor car is in the shop for repairs and that car Hakatai is being used in its place. I am therefore enclosing herewith a copy of operating form for Line 3441 for Frisco trains 207-208. You will note on the back of this form under remarks, No. 1, that this is a new operation, established to relieve regular Frisco operated sleepers for shopping.

Since Award 4000 of the Third Division of The National Railroad Adjustment Board very clearly points out that Rule 64 cannot be circumvented by merely making a different arrangement with the railroad for the use of Pullman cars in railroad parlor car service, I now ask that Conductor G. O. Hamilton be compensated for trip of 3-24-49 and that the Kansas City conductor entitled to the trip be compensated for each subsequent trip thereafter."

The Organization made this claim a part of a controversy concerning changes in rules governing working conditions of Pullman conductors by including it in the subject matter of a strike ballot distributed on March 18, 1950, by the Organization to Pullman conductors.

The Pullman Company contends that there was no violation of the Agreement when the Santa Fe withdrew car HAKATAI from the lease for use as a railroad parlor car during the period March 23 to July 10, 1949. Awards of the National Railroad Adjustment Board and of the Special Board of Adjustment support the Company's position.

OPINION OF BOARD: A jurisdictional question is presented by this case. Carrier has argued the merits, however, the Organization has not made a presentation on the facts.

It is contended by petitioning Carrier that as no claim has been filed by Chicago conductors notwithstanding car HAKATAI was used in parlor

car service on Train No. 11 from Chicago to Kansas City, therefore, showing that the use of the car in question under circumstances here prevailing was proper.

On behalf of the Organization there is cited Rule 50 of the applicable agreement, effective September 1, 1945, revised effective January 1, 1948; Circular No. 1 of the National Railroad Adjustment Board and Section 3 (i) of the Railway Labor Act on the theory that the dispute has not been progressed on the property.

Carrier contends that by reason of including this case with other disputes on which a strike ballot was distributed on March 18, 1950 that it can be considered as progressed on the property.

With this view we are not in accord. The progressing of such disputes is carefully spelled out under Rule 50 entitled "Right to Appeal"; also Circular No. 1 deals with procedure and provides in part "* * * shall be handled (referring to disputes) in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes * * *"; and further "No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

In examining this record we are of the opinion that the provisions cited have not been complied with herein.

Therefore, we are unable to entertain the claim here. To extend the clear meaning of the nature of progression of a dispute by an award of this Division of the Board is a matter beyond our power to do.

The case must be dismissed by reason of the situation found to be true on this record with reference to proper progression.

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 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 case is dismissed in accordance with Opinion.

AWARD

Case dismissed in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.