Award No. 6625

Docket No. PC-6571

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, 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 Conductor H. F. Nielsen, Penn. Terminal District, and certain other Extra Conductors of the Penn. Terminal District, that:

1. Rules 64, 25 and 38 of the Agreement between the Company and the Conductors were violated by the Company on June 1, 1952 and subsequent dates when the Company assigned a Porter-in-Charge to operate on Parlor Car 1714 of Line 2463 on PRR Train No. 171, New York to Washington.

2. Conductor Nielsen be credited and paid not less than 7 hours, a minimum day, for the trip New York to Washington June 1, 1952.

3. Each Extra Conductor entitled to this same assignment on June 2, 1952, and each subsequent date on which this assignment was carried out by a Porter-in-Charge be credited and paid in the same manner.

EMPLOYES' STATEMENT OF FACTS: I. On June 1, 1952, and subsequent days (excluding Sundays) PRR Train No. 171 operated between New York and Washington with the following consist: one locomotive followed by one baggage car followed by three Pullman cars followed by from nine to fourteen coaches (including one double-unit diner) followed by one Pullman car.

A Pullman Conductor was assigned to the three Pullman cars at the head end of the train.

A Porter-in-Charge was assigned to the Pullman car at the rear end of the train. (Parlor Car 1714 of Line 2463.)

II

The following portions of Rule 64 of the Agreement are involved in this dispute:

"Conductor and Optional Operations, (a) Pullman conductors shall be operated on all trains while carrying, at the same time, more

a train and found that the rules of the working Agreement did not compel Management to assign a conductor to the single uncoupled cars.

CONCLUSION

In this ex parte submission the Company has shown that no rule of the working Agreement requires Management to operate a second conductor on a train to which a conductor is assigned. Also, the Company has shown that it complied fully with the provisions of Rule 64 when it assigned a conductor to PRR train 171, Boston-Washington.

Additionally, the Company has shown that the work performed by the porter in charge assigned to Line 2463 was not conductor work. No rule of the Agreement under the conditions existing in this dispute required the Company to assign either a conductor or a porter in charge. The Company's decision to assign a porter in charge to collect tickets and cash fares in the car of Line 2463 was a discretionary matter and was made by the Company in the interest of the service.

Finally, Third Division Awards 5934 and 5936 support the Company's position that this case does not come within the rules as written. Therefore, there can have been no violation of the working Agreement.

The instant claim is without merit and should be denied.

All data presented herewith and in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to April 27, 1952, PRR Train 171 carried 3 parlor cars at the head end, followed by a diner and from 9 to 14 coaches, Boston to Washington, and Parlor Car 1714 at the rear end, New York to Washington. All four of these parlor cars were in charge of one Pullman conductor.

Effective on the above date and continuing until August 9, 1952, when Parlor Car 1714 was discontinued, a Porter-in-Charge was assigned.

The Employes contend that if additional conductor service was required on Car 1714, it should have been assigned to a Pullman Conductor, rather than to a Porter-in-Charge.

In the development of the facts it was brought to our attention that the Porter-in-Charge of Car 1714 is within the coverage of an agreement between the Carrier and the Brotherhood of Sleeping Car Porters, and that for his services on Car 1714 said Porter-in-Charge was entitled to receive and did receive $20.25 per month in excess of what he would have received as a Porter, as distinguished from a Porter-in-Charge. It has been suggested to us that there is involved in this dispute a jurisdictional dispute, apparent on the fact of the record, which requires that notice be given to the Brotherhood of Sleeping Car Porters.

In the light of certain recent decisions of the federal courts, we fully realize the problem of making the procedure of this Board conform to the law of the land. On the other hand, we do not find anything in the record before us to indicate that there is a jurisdictional question here involved. As already indicated, the record shows that the use of Parlor Car 1714 on Train 171 was discontinued as of August 9, 1952, so there is no issue as to future rights with respect to conductor service on that car. In other words, the present controversy does not involve any such question as to who is entitled to future work on Car 1714. The Porter-in-Charge was presumably

paid for his service up until the use of the car was discontinued, and we cannot see how he or his organization can possibly be harmed or affected by our determination of the question as to whether the Carrier is also obligated to pay the Claimants presently before us.

On the merits, both parties rely on Rule 64 of the current Agreement. Said Rule requires, subject to certain exceptions following, that "Pullman conductors shall be operated on all trains carrying at the same time more than one Pullman car, either sleeping or parlor, in service." Among the exceptions is one, (b), that provides "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." Another exception, (c), gives the Carrier the option of "assigning Pullman Conductors or porters-in-charge on all trains carrying two Pullman cars when the service is less than five hours." It is shown that the running time of Train 171 from New York to Washington was 3 hours and 55 minutes.

The Employes do not say that the Carrier was obligated to assign a second Pullman Conductor to Train 171 or to Parlor Car 1714. They say that the Carrier might have required one Conductor to serve all four parlor cars; but that if Carrier felt that additional service was required on Car 1714, it should have assigned it to an additional conductor, rather than to a porter-in-charge. In effect, the Employes contend for a construction of Rule 64 that would have us interpret it as meaning that, except as otherwise directed in the sub-sections, all service coming within the usual functions of Pullman Conductors should be performed by members of that group of employes, to the exclusion of Porters-in-Charge.

Rule 64 is somewhat in the nature of a scope rule. It undertakes to state, generally, in sub-section (a), the work to be performed by Pullman conductors and, inferentially, the work which Pullman conductors are entitled to perform. Simply stated, we think the rule means that a Pullman conductor shall be employed on every train that carries more than one Pullman car, either sleeping or parlor, in service, subject, however, to the applicability of one or more of the exceptions enumerated in the subsequent sub-sections of Rule 64. Neither sub-section (b) or (c) relates to such a situation as that presented by the facts in this case. More than one Pullman car was in service on Train 171 and, while the run was of less than five hours, there were also more than two such cars in service. While Rule 64 undertakes to list the maximum equipment that may be serviced by a porter-in-charge or an attendant-in-charge, we find nothing in the Rule relating to the maximum or minimum equipment that a conductor may be required to service. We do not find in the Rule any requirement that more than one Pullman conductor shall be employed on a train under any circumstances. Nor do we find any prohibition against the Carrier employing as many porters-in-charge as it sees fit, so long as it has a Pullman conductor on each train that requires the services of such a conductor.

The Employes have undertaken to justify their position by citing past practices on the property consistent with their contentions while the Carrier has pointed out that the Organization has unsuccessfully sought through the years to have the Agreement modified so as to give to the Employes that which they here seek. From a careful consideration of all of these factors we are unable to say that there has been such a mutual acquiescence on the part of the parties as would amount to a modification or construction of the express language of the Agreement.

The Employes have not established a violation of the Agreement.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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.