Award No. 6631
Docket No. PC-6711

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 T. M. Ellis and other Extra and Regular Conductors, Atlanta District, that:

1. Rule 46 of the Agreement between The Pullman Company and its Conductors was violated by the Company on or about December 15, 1951, when the Company allocated a Second Conductor seasonal operation on Southern Railway Trains Nos. 5 and 6 between Atlanta, Ga., and Cincinnati, Ohio, to the Jacksonville District;

2. This operation constituted "new service" which should properly have been allocated to the Atlanta District;

3. Extra Conductor T. M. Ellis, who was entitled to make the first trip on this assignment, be credited and paid for the trip he lost;

4. The Extra Conductor of the Atlanta District entitled to and available for service in this assignment on each date subsequent to the first trip during the bulletining and award period be similarly credited and paid;

5. Conductors Saunders, Freeman and Patton, of the Atlanta District entitled to this assignment subsequent to the bulletining and award period on the basis of their seniority, be credited and paid under applicable rules for each such trip denied them.

EMPLOYES' STATEMENT OF FACTS: I. On December 15, 1950, a new seasonal Second Conductor operation was established on trains SOU5-FEC9 and SOU6-FEC10. In the Operation of Conductors form dated January 8, 1951, whereby this run was established, the Company described it as follows:

"New operation account establishment of second conductor on 'New Royal Palm'."

This run was designated as Line 6891 and operated between Atlanta, Ga., and Miami, Fla.

Effective April 27, 1951, this run was discontinued, the Company's Operation of Conductors form stating:

"Operation discontinued account seasonal operation."

of the conductors in the districts involved. Subsequent to the discontinuance of the second conductor seasonal run between Atlanta and Miami, the Company set up a new seasonal conductor operation between Cincinnati and Miami, districts between which no second conductor seasonal run previously had been established. Inasmuch as no second conductor seasonal run had previously been established between these points, the Company properly considered this as new service as provided in Rule 46 of the Agreement.

CONCLUSION

The evidence of record conclusively supports the premise upon which Management rests its case. Question and Answer 4 of **Rule 46. Assignment of Runs to Districts** provides that previously established seasonal runs shall not be considered new service for the purpose of Rule 46. In the instant case, not second conductor seasonal run had previously been established between Cincinnati and Miami. Therefore, the second conductor seasonal run between Cincinnati and Miami established by Management, effective December 15, 1951, was considered as new service for the purpose of Rule 46, under the provisions of which it was awarded to the Jacksonville District.

Also, the Company has shown that its position in the instant case is consistent with the position which it took in the dispute filed in behalf of Washington District conductors who allegedly should have been assigned to the "Orange Blossom Special."

Finally, the Company has shown that Awards 3830 and 4647 do not support the position of the employes.

The Organization's 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 employes or their representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Beginning on December 15, 1950, and ending on April 27, 1951, the Carrier operated the "New Royal Palm", on a seasonal run, between Atlanta and Miami. A second Pullman conductor from the Atlanta District was assigned to this run.

On December 15, 1951, the "New Royal Palm" was reestablished on a seasonal basis running, however, from Cincinnati to Miami, with a second conductor assigned from the Jacksonville District.

The question for determination is whether the last mentioned run between Cincinnati and Miami was, in its entirety, "new service", within the meaning of Rule 46 of the applicable Agreement.

Rule 46 provides: "In the establishment of new service, the seniority of the extra conductors in the districts involved shall determine which district shall furnish conductors for this service." If the service resumed on December 15, 1951, as pertains to that part of the run operating between Atlanta and Miami, was not "new service", the assignment of the second conductor to that part of the run should have been from the Atlanta Division. This is necessarily true because there is appended to Rule 46 the following question and answer:

> "Q-4. Shall previously established seasonal runs be considered new service for the purpose of this rule?
>
> "A-4. No."

The Employes have cited Awards 3830, 4746 and 6472 in support of their contention, and the Carrier has referred to a letter from the Organization's

General Chairman, under date of September 30, 1946, to indicate that his interpretation of Rule 46 was in harmony with the Carrier's position in the present case. We have examined all of these documents and it is our conclusion that they are not helpful for the reason that they involved factual situations entirely different from that with which we are here concerned.

We agree with the observation made in Award 6476, where it was said that, "There is no provision in the Agreement that defines 'new service', therefore each case must be decided upon the facts in that case." It does appear from Question and Answer 4, however, that the reestablishment of a seasonal run is not new service. This leaves for determination the question as to whether an extension of a reestablished seasonal run into new territory requires a holding that the whole run so constituted is to be regarded as new service, or whether only that part of the run which is added to that previously existing is new service.

We are of the opinion that logic requires us to hold that the extension of the run from Atlanta to Cincinnati did not render the part from Atlanta to Miami a part of new service. Ordinarily, a thing is not destroyed by adding something to it. There is no qualification in Question and Answer 4, covering a situation where a reestablished seasonal run is enlarged or extended, and we have no authority to write such.

It is our conclusion that the part of the previously existing run between Atlanta and Miami did not become new service within the meaning of Rule 46 by virtue of the extension of the service to Cincinnati on December 15, 1951. We think, however, that the part of the run between Atlanta and Cincinnati should properly have been considered new service and should have been assigned accordingly.

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 the Carrier violated the Agreement.

AWARD

Claim sustained to the extent indicated in the Opinion.

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.

DISSENT TO AWARD 6631, DOCKET PC-6711

The Award of the Majority herein is in error for the reason that it is based upon the erroneous holding that the General Chairman's letter of

September 30, 1946, is "not helpful" in the instant case for the reason that the factual situation of seasonal runs was not specifically involved therein.

The letter, supra, interpreted "new service" as provided for in Rule 46 to include a run which "is shortened or lengthened to operate between Districts other than those it has been operating between." It made no exception of seasonal runs and, consequently, it is relevant to and should have been followed in the instant case.

Furthermore, the observation cited from Award 6476 should not have been followed by the Majority herein because the General Chairman's letter of September 30, 1946, was not presented as an issue in the case covered thereby.

For the foregoing reasons we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ E. T. Horsley