Award No. 6653

Docket No. PC-6639

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE PULLMAN COMPANY

THE ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

STATEMENT OF CLAIM: . . . claim of the Order of Railway Conductors, Pullman System, for and in behalf of Conductors T. V. Finnegan and N. Ledsky of the Cleveland District, in which we contend that The Pullman Company violated Rules 25 and 47 of the Agreement between The Pullman Company and its conductors, when

1. On December 5, 1948, and subsequent dates, these conductors were removed from the run on NYC Train 58 between Cleveland, Ohio, and Buffalo, New York.

2. We now ask that Conductors Finnegan and Ledsky be compensated for each trip that they are denied the right to operate the run on NYC Train 58, which was designated as Line 1568 between Cleveland and Buffalo, from December 5, 1948, and subsequent dates.

3. We further ask that this conductor run be restored to the Cleveland District.

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 under Rule 46 of the Agreement an extension of a second conductor run is new service.

OPINION OF BOARD: This claim results from an alleged violation of the Agreement and asks that Cleveland Conductors Finnegan and Ledsky be compensated for trips lost from December 5, 1948. The situation upon which claim is based was terminated September 25, 1949.

The issue is whether or not the operation designated as Line 1568 when established was new service?

It is contended by the Organization that Awards 3830 and 4647 support the positions taken. Carrier contends these awards do not support the instant claim.

Prior to December 5, 1948 a run between Cleveland and Buffalo was assigned to and operated by Cleveland District Conductors on NYC Train 58 outbound, and Train 209 in bound. On December 5, 1948 eastbound Train 58 was designated from Cleveland through Buffalo, New York and westbound Train 81, New York-Buffalo and Train 281, Buffalo-Cleveland. By this change in operation under Rule 46, Carrier assigned service on Trains 58, 81 and 251 to New York District Conductors. The Organization claimed violation of Rules 25 and 47. The former, basic seniority rule and Rule 47 providing that runs will not be reallocated from one district to another except by conference and agreement.

We believe the finding made in Award 4647 correctly interprets the same factual situation and of rules applying thereto:

> "We do not find the words 'extended run or extended service', freely used by both parties in submission and in argument, in any of the rules cited by either party, including Rule 46 on which the Company relies."

and

> "We think a new run was created when the 'Flamingo' operated as a separate train from Atlanta to Albany where it was consolidated with the 'Dixie Limited.'"

In keeping with the finding made in Award 4647 and in applying it to the instant case, the Cleveland-Buffalo run cannot be combined with the new run, Buffalo-New York, and all be considered new service as contended by carrier.

Also see recent Award 6631 giving consideration to the same factual situation with Referee Shake sitting with the Division and on which we reaffirm the holding there made, which provides in part:

> "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.
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> "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 the 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

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 27th day of May, 1954.

DISSENT TO AWARD 6653, DOCKET PC-6639

This Award is the result of an erroneous understanding of the issue and factual situation involved in this case. Further, it is the result of erroneous and restrictive consideration of an excerpt quoted out of context from Award 4647 and of an excerpt quoted from Award 6631, which latter excerpt itself distinguishes the factual situation covered thereby from that in the instant case. Further, this Award is the result of an abject disregard for an agreement between the parties as contained in a letter from the General Chairman, who was one of the signatories to the main agreement between the parties, and in which letter the General Chairman subscribed to the Carrier's interpretation of the rules.

The Opinion of Board herein misstates the issue as follows—"The issue is whether or not the operation designated as Line 1568 when established was new service?" The correct issue herein is whether or not Lines 1566 and 5517 were new service when established. Line 1568 was abolished when Lines 1566 and 5517 were established.

It is elementary and axiomatic that the General Chairman, who admittedly had authority to consummate the rules in the first place, had the same authority to interpret the rules. In his letter of interpretation, the General Chairman stated as follows and incorporated therein examples illustrating application thereof to "other like cases" in the past.

> "I based my position on Rule 46, the rule that has applied in other like cases, and I use this line of reasoning: When a run is **shortened** or **lengthened** to operate between Districts other than those it has been operating between the seniority of the extra conductors of the Districts involved should determine which District will be entitled to the conductor operation.
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> "As an illustration: Detroit District operated a run on the Baltimore & Ohio from Detroit to Cincinnati. This run was extended from Cincinnati to Louisville. It was the Louisville conductors' position that they had the right to the run on the basis of seniority. No doubt when the run was established between Detroit and Cincinnati it was given to Detroit on the basis of seniority. However, this was prior to the time Rule 46 was written into the Agreement but it was a common practice. When the run was extended to Louisville those conductors felt its operation should be decided on the basis of Rule 46 and the result was the run was given to Louisville District because their extra conductors had the greater seniority. In another instance, Cleveland District was operating a run into Washington and the run was extended to operate Cleveland to Baltimore. After the extension, which district should have the operation was determined on the basis of seniority. As Cleveland had the older extra men, that District retained the operation.
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> "To follow the line of reasoning expressed by the Washington Division—which is, in effect, that seniority should not decide such matters, but that the run should remain with the District operating

it, even though it is **shortened or lengthened** to operate into a different District--would in my opinion, do grave injustice to many of the Districts.

" * * *

"It will be observed that my position is consistent. If a run is operating between two given Districts and is **shortened or lengthened** to operate into a different District, the seniority of the extra conductors of that District must then receive consideration under Rule 46. In the instant case there can be no argument that the Jacksonville District extra conductors had greater seniority than Washington extra conductors.

"My interpretation of Rule 46 is based on the reasons outlined above."

In the case covered by Award 4647, the Organization did not take issue with the agreed upon interpretation, supra, of Rule 46, but it simply directed attention to the fact that that interpretation was predicated upon runs being shortened or lengthened to operate into a different district whereas in the case covered by Award 4647 the run was simply extended from Atlanta to another point (Albany) within the Atlanta District and consequently was not "lengthened to operate into a different district."

In its Opinion in Award 4647, this Division also held that "These examples are not apposite. The Organization does not challenge any of them as it challenges the assignment here." Accordingly, based upon the complete Opinion in Award 4647, a denial Award would have been made therein if the run in that case, like the run in the instant case, had been "lengthened to operate into a different district."

Error is also shown in the instant Award by its holding that the same factual situation was considered by Referee Shake in Award 6631. As indicated in the excerpt quoted from that Award in the instant case, the Award therein was based upon the premise that "there is no qualification in Question and Answer 4, covering a situation where a re-established seasonal run is enlarged or extended, and we have no authority to write such." See the dissent to Award 6631.

Furthermore, Referee Shake held in Award 6631 that, because "seasonal runs" were not involved in Award 4647 and other Awards cited, those Awards covered factual situations entirely different from that with which he was confronted in his case.

No "seasonal run" is involved in the instant case. It obviously follows, therefore, that Referee Shake's Award lends no support to a sustaining award in the instant case.

Considering that the Carrier submitted the instant case ex parte to this Board, and that the Organization elected not to defend the claim herein notwithstanding two invitations were extended to it by the Secretary of this Division to do so, the majority in the instant case went far astray in an attempt to support its sustaining Award herein.

For the foregoing reasons this Award is in error and we dissent thereto.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ E. T. Horsley

/s/ J. E. Kemp