

Award No. 6990
Docket No. PC-6790

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: The Order of Railway Conductors claims for and in behalf of Conductor E. F. Carlson, Milwaukee District, that:

1. Rule 52(a) of the Agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Order of Railway Conductors was violated by the Company on July 19, 1952 and again on August 2, 1952, when it operated Milwaukee Train No. 9-8 carrying two Milwaukee sleeping cars in service between Pembine, Wis., and Sault Ste. Marie, Mich., without Milwaukee sleeping car Conductors.

2. Conductor Carlson, who was entitled to these assignments, be credited and paid under the appropriate rules of the Agreement for these trips (Pembine to Sault Ste. Marie in road service, Sault Ste. Marie to Pembine in dead-head service).

EMPLOYES' STATEMENT OF FACTS:

I

Milwaukee Train No. 9-8 operated between Chicago, Ill., and Sault Ste. Marie, Mich., via Pembine, Wis.

Between Chicago and Pembine this Milwaukee train operated on Milwaukee trackage. Between Pembine and Sault Ste. Marie this Milwaukee train operated on Soo Railroad trackage.

On July 19 and again on August 2, 1952, this Milwaukee train was operated Pembine to Sault Ste. Marie carrying two Milwaukee sleeping cars in service without a Milwaukee sleeping car Conductor.

II

Rule 52(a) of the current Agreement between the Milwaukee Railroad and its Conductors reads as follows:

"(a) Milwaukee sleeping or parlor car conductors shall be operated on all trains while carrying, at the same time, more than

System as there is only one railroad and one seniority district involved. Again attention is directed to the fact that the CMSTP&P RR. Co. System comprises one seniority district for sleeping and parlor car conductors and the seniority rights of sleeping and parlor car conductors are **confined** to that one seniority district.

By the claim which the employes have presented in this case they are asking your Honorable Board to amend the schedule rule so as to extend the seniority rights of sleeping and parlor car conductors beyond the CMSTP&P RR. Company System to include also a portion of the Soo Line Railroad. As your Honorable Board has so often held, it is not the function of your Board to render awards which would have the effect of amending rules but to the contrary, it is clearly the function of your Honorable Board to render awards based on schedule rules as they actually exist.

There is no ambiguity about the language of the Question and Answer following Rule 24. There is no support for the claim which has been presented in this case and we respectfully request that same be denied.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Milwaukee sleeping cars were operated in service between Chicago, Illinois and Sault Ste. Marie, Michigan, on the dates claimed herein, without a Milwaukee Sleeping Car Conductor being used thereon. The Carrier System does not operate over the entire route used between the two points mentioned but over a combination of Carrier rails and those of the Soo Line Railroad. The intersection of these lines on the route in question is at Pembine, Wisconsin, 278 miles from Chicago, Illinois.

Claimant relies on Rule 52(a) of the current Agreement and Awards 2743, 4000 and 6911.

Respondent Carrier, in brief, relies on the fact that the cars in question were not operated on Carrier's rails from Pembine, Wisconsin to Sault Ste. Marie, Michigan and that Claimant holds seniority only on his seniority district within a limited territory on Carrier's System. That Carrier's sleeping car conductors are not Pullman Company conductors in any sense of the term, and that they have no employment status or relationship with any other Carrier or Company. Citing Awards 5211, 6112 and Rule 24.

This question was before this Board in Award 4000 in which we said in a sustaining award:

"The Carrier contends that the New York Central was operating the trains including the Pullman cars and that the Pullman Company could not place its conductors on the trains even if it wanted to. Of course, the Pullman Company may have obligated itself with the New York Central not to use their own conductors. But, even so, such action in no manner relieves the Pullman Company of its contractual obligations to its conductors. Under Rule 64 (a), Pullman conductors should have been used on the two trains here involved. The Pullman Company cannot farm out its equipment for sleeping or parlor car service and deprive its conductors of the work which was guaranteed to them under the Agreement. If the contract could be circumvented by so simple an expedient, it would be of little or no benefit to the employes within it. We must construe it in the sense intended rather than to give it a technical meaning that would defeat the very purpose of the contract itself. When the Pullman Company placed these cars in service, by whatever method it saw fit to employ, it did not relieve itself of its contractual obligations towards its own conductors."

The same principle is involved in this case. The rule in question, 52(a), was adopted from the Pullman Company contract with its conductors, Rule 64(a), considered in Award 4000. The application to be given to it in this

case will be the same. Also see finding of Special Board of Adjustment—National Mediation Board—Docket 3099, St. John-Halifax Movement in which Chairman Swacker ruled to the same effect when Pullman cars were operated in Canadian territory over Canadian National tracks. The Pullman Company had no contract with the Canadian National such as exists with carriers within the territorial limits of the United States.

We are of the opinion that the employe status herein was intended to relate to cars and not to trackage. The seniority district relates to the starting point of the cars and is not limited as contended by Carrier.

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 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 Agreement was violated.

AWARD

Claim sustained in accordance with Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1955.

DISSENT TO AWARD NO. 6990, DOCKET NO. PC-6790

The referee's bit of casuistry, to which we dissent, has resulted from his failure to distinguish between the Pullman Company's unique identity as a carrier and the character of the respondent Milwaukee Railroad. Out of that failure, there has arisen this unworkable decision having the effect of interchanging cars and personnel between railroads. The railroads of this nation and their respective employes would need no such instrumentality as this dissent to register their disapproval of the havoc and disorder that would obtain under an arrangement whereby employes are interchanged along with rolling stock.

"The Pullman Company operates on many railroads of the country" and "Pullman cars constitute the physical equipment with which [it] performs its carrier service" is what we said in **Award 4000** cited by petitioner. But the Milwaukee Railroad is limited to the physical, real property on which it performs its carrier service. It is that property alone, and only, to which the seniority of the claimants here is confined by the provisions of the collectively bargained agreement (Rule 24).

Seniority is the *sine qua non* in railroad job opportunities. Milwaukee employes have no seniority on the Soo Line Railroad with or without cars and no comparison with terminology in Pullman agreements can create a nationwide scope of Milwaukee railroadmen's seniority.

/s/ E. T. Horsley
/s/ R. M. Butler
/s/ W. H. Castle
/s/ J. E. Kemp
/s/ C. P. Dugan