

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN
PULLMAN SYSTEM**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Boston District Conductors, that:

1. Rules 33, 46 and 47 of the Agreement between the Company and its Conductors were violated by the Company when the Company, effective September 27, 1953:

(a) Improperly classified as "new service" previously existing service between Boston and Buffalo on B&A-NYC Trains Nos. 33 and 78 in violation of the provisions of Rules 33 and 46;

(b) Reallocated to the Buffalo District without conference as required by Rule 47 a portion of a run previously and properly allocated to the Boston District, namely, service on B&A-NYC Train No. 33 between Boston and Buffalo.

2. Those Boston Conductors entitled to assignment in this run (Boston to Buffalo in service on B&A-NYC Train 33 and Buffalo to Boston not in charge of equipment on NYC Trains Nos. 8-22) be compensated under applicable rules of the Agreement for all round trips improperly withheld from them departing Boston during the period September 27, 1953, to December 27, 1953. The record to be checked to determine the Conductors entitled to this work.

EMPLOYES' STATEMENT OF FACTS:

I.

A. Prior to September 27, 1953, Pullman service was in existence from Boston to Detroit on B&A-NYC Train No. 33.

On September 27, 1953, and subsequently this same Pullman service continued in existence from Boston to Detroit on B&A-NYC Train No. 33 Boston to Buffalo, and MC Train No. 17, Buffalo to Detroit.

run and that the new run shall be assigned to the district having the greater seniority as provided in Rule 46. Additionally, the Company has shown that prior to the instant dispute the Organization agreed with Management that Rule 46 contemplates that the Company properly may combine portions of two previously operated runs in the manner found herein and consider the new run as new service. Also, the Company has shown that Rules 43 and 47 are not applicable to this dispute as alleged.

The claim of the Organization in behalf of certain Boston District conductors is without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants are Boston District Conductors and this dispute stems from certain operational changes effected by the Carrier on September 27, 1953 without consulting the Claimants' bargaining representatives. Prior to that date, Boston District conductors were assigned on Train 33, Boston to Detroit, outbound. Returning, the assignment included road service Detroit to Buffalo on Train 8, thence service "not in charge of cars" Buffalo to Boston on Train 78. During that period, Buffalo District conductors were assigned to Train 78, Buffalo to Boston, eastbound, and as second conductor on Train 27, westbound. By reason of the aforementioned operational changes of September 27, 1953, beginning that date, Train 33 was terminated at Buffalo instead of Detroit and the Pullman cars in that train were operated from Buffalo into Detroit on Train 17, under the charge of that train's conductor. Thereafter, the service involved was operated Boston to Buffalo on Train 33. The eastward service on Train 78, Buffalo to Boston, was unchanged. The Carrier awarded this service on Trains 33 and 78 to the Buffalo District on the theory that "new service" had been established. There is no dispute regarding these facts.

On the basis of this factual situation, the Petitioner contends that the Carrier has violated Rule 47 of the applicable Agreement and that the Claimants, the Boston District conductors, were improperly deprived of work. It maintains further that the changed assignment should have been rebulletined as provided by Rule 33 of the Agreement.

On the other hand, it is the Carrier's position that Rule 46 is controlling and supports the assignment of the Boston to Buffalo run to the Buffalo District conductors.

Rule 46 reads as follows:

"RULE 46. Assignment of Runs to Districts. 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."

The mandate of this Rule is unmistakable and clear. However, the question as to what constitutes "new service" must be resolved for the Agreement contains no definition of that phrase. Actually what happened on September 27, 1953, of course, was that the Carrier combined its eastward service in Train 78 with its westward service in Train 33 between Buffalo and Boston, eliminating the former Buffalo-Boston service "not in charge of cars," eastbound, and the second Conductor on Train 27, westbound. The issue, therefore, is, as both parties have pointed out, whether the Carrier may combine a por-

tion of a previously existing run operated by one seniority district with a portion of another previously existing run operated by another seniority district and allocate the resulting run as "new service" under Rule 46.

In the present case, we note, there was no change in service between Boston and Buffalo on Trains 33 and 78. The only change of any kind with respect to those runs was to shorten Train 33's run from Boston to Buffalo instead of Detroit. As heretofore indicated, that run had prior to September 27, 1953, covered the same area, from Boston to Buffalo, but had in addition proceeded further to Detroit.

We cannot consider this to be "new service" within the meaning of Rule 46. If the contrary were true, the Agreement could readily be circumvented by the simple expedient of shortening or lengthening runs or devising combinations of existing runs. This would result in confused relations and the emasculation of important provisions of the Agreement.

Rule 47 clearly contemplates that whenever existing runs are reallocated, the Petitioner's General Chairman is to be consulted. Otherwise, the Organization's effectiveness as a collective bargaining agent would be undermined and impaired. The changes effected in the instant case are of fundamental importance to the conductors involved as well as to the Carrier and the former's appropriate representatives had every reason to be consulted before the changes were put into operation. Not to consult these representatives constitutes a violation of the Agreement and we so find.

However laudable and desirable the accomplishment of economies and other operational improvements may be, it is nevertheless essential that they be effected within the framework of the applicable Agreements which, in this case, includes the requirements of Rule 47.

There is no merit to the Carrier's further contention that its unilateral action in question was justified by past practice. The evidence presented in that connection is not sufficiently adequate to establish the widespread custom, usage and acceptance of the practice that is necessary to equate past practice with the dignity of a binding work condition, particularly in the face of Rule 47. Nor do we find that any commitment estops Claimants from asserting their claims.

The Petitioner requests that the Claimants be compensated for all round trips departing Boston during the period September 27, 1953 to December 27, 1953. This three month period appears to be reasonable and since there was a definite and clearcut violation of the Agreement, in our opinion, no valid reason is perceived for denying these compensation claims, except that it will be reduced by any pay earned by Claimants as Pullman conductors during that period.

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 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 the Agreement was violated.

AWARD

Claims sustained to the extent indicated in our Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1958.

DISSENT TO AWARD NO. 8565, DOCKET NO. PC-8807

The majority in Award 8565 states that the issue herein was as follows:

" * * * The issue, therefore, is, as both parties have pointed out, whether the Carrier may combine a portion of a previously existing run operated by one seniority district with a portion of another previously existing run operated by another seniority district and allocate the resulting run as 'new service' under Rule 46."

The alternative to combining the remaining portions of such runs, of course, would be to have two assignments with deadhead movements in opposite directions instead of one assignment with service in both directions.

The facts of record include admissions by the Petitioner which confirmed Carrier's position that Rule 46 was controlling over a situation of this kind, and which admissions warranted a denial award. One such admission by Petitioner is as follows:

"Your Petitioner recognizes that a special situation has arisen when two existing runs with identical terminals come to consist solely of road service in one direction in one run and road service in the opposite direction in the other run."

The term "special situation", as used by Petitioner to describe the service which resulted from the changes effective September 27, 1953, means a situation which is unusual, uncommon, unique, etc. As applied to service, it can only mean "new service" inasmuch as such a situation did not exist prior to the changes. Hence Rule 46 was applicable.

Petitioner also admitted:

"The combination of portion of runs as described above into a single run would have been permissible under a modification of the Agreement proposed by the Organization before the 1951 Emergency Board and rejected at that time." (Emphasis theirs)

Following is a comparison, in parallel columns, of the Rule as proposed by the Organization and Rule 46 as agreed upon:

Rule Proposed	Rule Adopted
When service, not previously operated, is established, the seniority of the extra conductors in the districts involved shall be used in determining which district shall furnish conductors for such service.	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.

(Differences emphasized)

Carrier shows that Petitioner furnished the following example as illustrating the intent of its proposed Rule:

"EXAMPLE 6: Pullman conductor assignments are operated between New York and Washington in Pennsylvania train Nos. 110 and 111, with Pennsylvania Terminal District conductors assigned. Pullman conductor assignments are operated between Washington and New York in Pennsylvania trains 109 and 108 with Washington District conductors assigned. The railroad discontinues trains No. 110 and 109 leaving one-half of a run between Pennsylvania Terminal and Washington and one-half of a run between Washington and Pennsylvania Terminal. These two runs are combined to make full time conductor assignments. The run would be awarded to either Washington or Pennsylvania Terminal District depending on which had the senior conductors on the extra list."

Inasmuch as the proposed rule admittedly was intended to permit the combining of runs in such circumstances, there should have been no question but that such a combination was also permissible under the rule adopted inasmuch as the term "new service" obviously includes but is not confined to "service not previously operated". Furthermore, the answer to Question 1 under Rule 46 indicates that the term "new service" as used therein is intended to be synonymous with the term "new run" because it speaks of the districts through which the "run" operates and it can only mean the "new run" i.e., "new service" being established.

The majority herein also states:

"The changes effected in the instant case are of fundamental importance to the conductors involved as well as to the Carrier * * *."

Petitioner did not allege that the conductors involved in these changes suffered any injustice thereby, but on the contrary admitted as follows:

"Your Petitioner has clearly stated that in the instant case the reallocation made is not one which is in itself undesirable; * * *."

Rule 46 provides adequate protection to the conductors involved in such changes because it provides that seniority of extra conductors in all districts through which runs operate shall be controlling. Petitioner admitted that, in the instant case, extra conductors of the Buffalo District had greater seniority than the claimant Boston District conductors.

Rule 47 provides:

"RULE 47. Reallocation of Runs. Except as provided in Rules 43 and 44, runs assigned to a district or agency shall not be re-allocated to another district or agency without conference and agreement between Management and the General Chairman."

It is significant that Rule 47 restricts the reallocation of "runs assigned to a district or agency" but contains no restriction covering parts thereof remaining after other parts of such runs are discontinued.

For the foregoing reasons, Award 8565 is in error and we dissent.

/s/ W. H. Castle

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp