

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, 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 Conductors A. O. Hansen, H. J. Hurley, J. McLaughlin, R. M. Miller, E. E. Davies, C. H. Wilson, E. P. Egan, F. C. Barry, G. W. Thompson and A. J. Johnson, that:

1. Conductors A. O. Hansen, H. J. Hurley, J. McLaughlin, R. M. Miller, E. E. Davies, C. H. Wilson, E. P. Egan, F. C. Barry, G. W. Thompson and A. J. Johnson are required to relinquish supervisory and other duties properly performed only by these Conductors on Pullman car in Line 4098, these duties being performed by other Pullman employes not possessing seniority rights to perform Pullman Conductor work.

2. This deprivation of work right is in violation of Rule 64 (e) between The Pullman Company and its Conductors effective January 1, 1951, and in further violation of Rule 25 of this same Agreement.

3. This loss occurred as a result of the Operation of Conductors Form 93.126 issued by The Pullman Company, Chicago West District, Chicago, Illinois, February 10, 1956, effective February 29, 1956, governing Conductor operations on C. M. St. P&P-UP Trains Nos. 103-104 between Chicago, Illinois and Los Angeles, California, designated as Line 4364.

4. Conductors A. O. Hansen, H. J. Hurley, J. McLaughlin, R. M. Miller, E. E. Davies, C. H. Wilson, E. P. Egan, F. C. Barry, G. W. Thompson and A. J. Johnson be credited and paid under appropriate rules of the Agreement for all time so lost between the hours of 11:20 A. M. and 2:35 P. M. daily from the effective date of the above order to the date when these job rights are restored to these Conductors.

5. That the relief Conductor assigned to C. M. St. P&P-UP Trains 103-104 and 101-102 likewise be credited and paid.

within the rules as written. If single cars parked in a terminal are to be covered by the Agreement a rule must be negotiated under the Railway Labor Act."

Additional support for the Company's position that Rule 64 (e) does not require assignment of a conductor to the car of Line 4098 is found in the dispute decided by Third Division Award 4814, in which Award the Third Division also had occasion to interpret the provisions of Rule 64. Briefly stated, the facts in Award 4814 involved the switching operation of two Pullman cars in Lines 2373 and 2357 which arrived Philadelphia 30th Street Station on PRR train 108 at 4:36 A. M. The two cars in Lines 2373 and 2357 were switched from the 30th Street Station to the Broad Street Station, a rail distance of three miles, requiring about 59 minutes switching time. The cars were parked at the Broad Street Station at about 5:35 A. M. where they remained with scheduled occupancy by passengers until 8:00 A. M. The Organization alleged that the Company was required to assign a conductor to the switching operation of the two Pullman cars referred to above. In Award 4814, under **OPINION OF BOARD**, the Board held that the significant provisions of Rule 64 are ". . . that it is limited in its application to at least two Pullman cars in service, and that such cars must be a train or a part of a train," but that the cars in the case at hand were not a train or part of a train. Such conclusion is supported by Award 3759.

The Company wishes to point out to the Board that in the case covered by Third Division Award 6475, relied upon by the Organization, the Columbus-New York car of Line 2335 immediately after arrival in Pittsburgh was detached from PRR train 202 and was available and accessible to passengers who held space in that car east of Pittsburgh. It was subsequently attached to PRR train 32 on arrival. Thus, the car was in a terminal and passengers could board the train and surrender their Pullman tickets or purchase transportation from the conductor during practically the entire layover period of the car in Pittsburgh. In the instant case, the Company has established that the car of Line 4098 does not remain in the Union Station but is taken as part of a switching movement to the Pennsylvania Yard where it is not accessible to passengers.

CONCLUSION

The Company has shown in this submission that Rule 64 (e) does not require the assignment of a conductor under the circumstances involved in this case. The Company has further shown that Awards 5936 and 4814 of the National Railroad Adjustment Board support its position in this dispute.

The claim is without merit and should be denied.

The Company affirms that all data presented herewith and in support of its position have heretofore been presented in substance to the employe or his representative and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Employes state that the Carrier violated Rule 64 (e) and 25 of their Agreement when the Carrier issued Operation of Conductor's Form providing for its service on UP-C.M.St.P.&P. Train No. 104, Los Angeles to Chicago, effective February 29, 1956, which deprived claimants of Pullman Conductor work.

The facts in this claim are that four Pullman cars operate in a train leaving Los Angeles for Chicago where two of the cars terminate. The remaining two cars (4098 and 4097) move through to New York. One Pullman car (4098) is involved in this claim. Train No. 104 is scheduled to arrive in Chicago at 11:00 A. M. and car 4098 is scheduled to depart for New York from the same station at which it arrives at 3:00 P. M. on Pennsylvania Train No. 48. The Pullman Conductor for that train reports for duty at 2:15 P. M. Under the Operation of Conductor's Form, the incoming Pullman Conductor is relieved from duty at 11:20 A. M. Both the incoming and outgoing Pullman Conductors are within the same seniority district. From the time the incoming Pullman Conductor is released from duty at 11:20 A. M., until the outgoing Pullman Conductor reports for duty at 2:15 P. M., the car in question is not in charge of a Pullman Conductor. During the time between the arrival of the car and the time the departing Pullman Conductor reports for duty, passengers are allowed to occupy the car. Some passengers detrain when the car arrives at Chicago and again board the car before departure, some passengers and the personal effects of most passengers remain on the car until departure.

The Employees further state that the issue presented in this claim, namely that the Carrier violated Rule 64 (e) of the effective Agreement, was presented to this Board in a claim which resulted in a sustaining award (Award 6475).

The Carrier states that it has not violated any rules of the effective Agreement because Rule 64 (e) has no application to the facts and circumstances in this claim. There is no rule in the Agreement to support this claim. That the issue in this claim is whether or not the Pullman Management is required under the Agreement to assign a Pullman Conductor to a Pullman car during a switching movement.

The Carrier further states that if Rule 64 (e) were applicable in this claim, one of the three conditions of the rule is not present, namely, that the car in question was not scheduled to be vacated at the Pullman Conductor's foreign or home terminal.

Rule 64 (e) reads as follows:

"When passengers are permitted to occupy a car or cars in charge of a conductor beyond the scheduled arrival time at the foreign or home terminal of the conductor, he shall not be released from duty until the scheduled time the car or cars are to be vacated."

This rule states that when passengers are permitted to occupy a car or cars in charge of a conductor **beyond** the scheduled arrival time at the foreign or home terminal of the conductor, he shall not be released from duty until the scheduled time the car or cars are to be vacated. The key word in this rule is "beyond", which means that if passengers are permitted to stay on the car beyond the scheduled arrival time of the car the Conductor must remain on duty. Therefore, the issue presented in this claim is the same issue as was presented in the claim that resulted in affirmative award 6475. The decision reached in that award should be followed.

The Board finds that since the Carrier required the Pullman Conductor to be relieved from duty at 11:20 A. M. rather than at 2:15 P. M., when passengers are permitted to occupy car (4098) beyond the scheduled arrival time, that the Carrier violated Rule 64 (e) 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 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 Carrier violated Rule 64 (e) of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1960.

SUPPORTING OPINION TO AWARD 9176, DOCKET NO. PC-8933.

In deciding this case the Referee properly followed the decision and findings set forth in Award 6475. The factors adjudicated in this dispute are in every essential respect identical with the factors in the dispute which resulted in Award 6475.

Carrier's action in not settling this issue on the property can only be construed as an attempt to overturn Award 6475. Part of Carrier's defense here was predicated upon an erroneous construction of the language used in Rule 64(e). Further, Carrier attempted to add an exception to Rule 64(e), i.e., that the car in question was not scheduled to be vacated at the Conductor's home terminal.

Reduced to its simplest details, the exception Carrier attempted to add to the Rule would give the Carrier unlimited discretion in applying the Rule in question. Obviously, the possibilities for conflict open to a fertile mind with such a Rule would be unlimited, and opportunities for confusion unbridled.

The Referee in this Award has properly interpreted the parties' Agreement.

Submitted by C. P. Carr January 15, 1960.

DISSENT TO AWARD NO. 9176, DOCKET NO. PC-8933.

Award 9176 is in serious error.

The majority herein correctly states as follows:

"The facts in this claim are that four Pullman cars operate in a train leaving Los Angeles for Chicago where two of the cars terminate. The remaining two cars (4098 and 4097) move through to New York. * * *"

Accordingly, the two cars in Lines 4097 and 4098 are not scheduled "to be vacated" until their arrival in New York. The car in Line 4097 moves through to New York via the New York Central and is switched from the Union Station to the New York Central at La Salle Street Station. The car in Line 4098 moves through to New York via the Pennsylvania Railroad and is switched from the Union Station to the Pennsylvania Railroad Yard. Obviously a single conductor could not have been held on duty to service both of these cars at the same time and at the widely separated locations in Chicago to which they were switched. Consequently a denial award was requisite in this case.

This Division was not confronted with a similar situation in Award 6475 and that Award should not have been followed by the majority herein in deciding the instant case because the premise upon which it was based is not feasible of application when more than one car are switched out of a train in a terminal for separate movement to other terminals as in the instant case.

Cars being scheduled "to be vacated" at the conductor's terminal is a condition precedent to the application of Rule 64 (e). That condition was not present at Chicago and Rule 64 (e) is not applicable.

For the foregoing reasons, we dissent.

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ C. P. Dugan

/s/ J. F. Mullen

REPLY TO DISSENT ON AWARD 9176, DOCKET NO. PC-8933.

It will be noted this Labor Member has written a Supporting Opinion to the majority's findings in this Award. At the time the foregoing Supporting Opinion was written the Dissent of Carrier Members was not in the hands of this Member. Accordingly, it is deemed appropriate to answer Carrier Members' incorrect and most tortuous contention that the movement of the car operating in Line 4097 should have been considered in the determination of this dispute.

It is apparent that Carrier Members did not properly refer to the record here involved. By reference to Carrier's Exhibit A, Page 31 of the record, the following discussion is in evidence:

(Organization Representative)

"A. G. Wise: The claim we are involved in today is, the car arrives in the Union Station and departs from the Union Station.

(Carrier's Representative)

"Mr. Ganzer: O.K., I just wanted to make sure of that, that 4097 and 4095 are not involved in this claim."

Further evidence that the car in Line 4097 is not involved in this dispute may be gathered from an examination of Page 30, Carrier's Exhibit A, wherein it is stated that an additional claim is pending on the car operating in Line 4097:

It is thus quite clear that the car of Line 4097 was not before the Referee and the Board in Docket No. PC-8933.

Presented by C. P. Carr January 20, 1960.