

Award No. 9638

Docket No. CL-9094

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Oliver Crowther, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

a. The Carrier violated the Rules Agreement, effective May 1, 1942 except as amended, particularly the Scope, at the Ticket Sales and Service Bureau, Penna. Station, Pittsburgh, Pa., by assigning the work of handling Pullman space to Pullman conductors of trains 23, 60, 66, 105 and 203, which work is part of the assigned duties of the ticket clerks at this point.

b. Gabriel Upheil, Stanley Grosiak, Robert Surls, W. P. Plummer, H. B. Smith, E. J. Imhoff and E. R. McCall, as well as such extra clerks that may fill their positions during the period of the claim, be paid a three hour call as a penalty for the period August 1, 1955 until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case hold positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various rules thereof may be referred to herein from time to time without quoting in full.

The Carrier maintains at the Pennsylvania Station, Pittsburgh, Pa., a Ticket Sales & Service Bureau for the sale of rail and pullman tickets to the public, and related services. Pullman reservations and the sale of pullman space has been handled by the Carrier's ticket clerks at this station for at least thirty years. Prior to August 1, 1955, all of the available pullman space

Agreement has been violated. It is left to decide whether the claim as presented should be completely sustained.

* * * * *

Under these circumstances we are of the opinion that there has been a technical violation of the rules resulting in no loss to the claimant and he is therefore entitled to no penalty; but we also are of the opinion that the matter should be negotiated by the parties if the Carrier does not desist from continuing the practice complained of."

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

All data contained herein have been presented to the employees involved or to their duly authorized representatives. (Exhibits not reproduced)

OPINION OF BOARD: There is in the record "A Joint State of Agreed Upon Facts". We set it forth at this point.

"JOINT STATEMENT OF

AGREED UPON FACTS: Claimants were regularly assigned to the second trick as Ticket Sellers in the Ticket Sales and Service Bureau, Pennsylvania Station, Pittsburgh, Pa.

Prior to August 1, 1955, all of the available Pullman space allocated to the Ticket Sales and Service Bureau, which was not sold, was retained in the Ticket Sales and Service Bureau until 10 minutes before train departure at which time all unsold space was turned over to the Pullman Conductor.

Effective August 1, 1955, a portion of the still available unsold space allocated to the Ticket Sales and Service Bureau was turned over to the Pullman Conductors at 8:30 P. M., for the following trains departing from Pennsylvania Station, as indicated below:

Train Number	Departing
23	10:57 P. M.
60	10:00 P. M.
66	10:20 P. M.
105	11:00 P. M.
203	10:40 P. M.

The Pullman Conductors would contact the passengers checking in at the Check-In-Desk and endeavor to sell the passenger better space, if they had such space.

The space which was turned over to the Pullman Conductors remained on the Board as available space at the Ticket Sales and Service Bureau and if a passenger made request for such space at the Ticket Sales and Service Bureau, the Ticket Seller would get the space from the Pullman Conductor and sell the space.

This practice was discontinued on November 1, 1955, and the practice in effect prior to August 1, 1955, is again being followed.

Case had been handled in accordance with the applicable rules of the Rules Agreement."

There are additional facts upon which there seems to be little if any dispute.

Carrier as a corporation is a legal entity. The Pullman Company is a separate entity. Carrier together with other carriers own corporate stock of the Pullman Company.

Organization and Carrier both in written and oral presentation seem to agree that when Carrier through its Ticket Sellers sold Pullman space it was acting as an agent of the Pullman Company; that Carrier's Ticket Sellers were not employees of the Pullman Company nor were the Pullman Conductors employees of Carrier.

No written agreement between the two corporations is in evidence. In response to questions at the oral hearing it appeared that there was either an agreement or an "understanding" between the two companies as to sales of space, the terms of which are not shown in the record.

There is no showing or contention that the change of practice actually resulted in the loss of any job or the shortening of hours.

Organization claims that Carrier violated the Rules Agreement "by assigning the work of handling Pullman space to Pullman Conductors", as set forth in the "Joint Statement of Agreed Upon Facts"; that the change lessened the work of the ticket sellers and had it been continued might have lessened the number of jobs available to ticket sellers. Organization contends for a finding of rules violation and a monetary award.

Carrier claims that not it but the Pullman Company made the change; the change of procedure could not, therefore, be a violation upon the part of carrier. Carrier does not concede that it violated the rules even if it could possibly be held that it and not the Pullman Company made the change in procedure. It also contends the evidence as to violation or propriety of a monetary award is highly speculative.

We recognize that in some situations and based upon convincing evidence both Courts and Boards have looked through what was a mere veil of legal entity. There is not, however, here such evidence. There is no evidence that Carrier made the change, neither is there evidence that Carrier compelled the Pullman Company to make the change.

The contention of organization that there might have been loss of jobs and consequently a monetary loss is too speculative to form the basis of a holding of rule violation or a monetary award.

The record before us does not contain a preponderance of evidence tending to prove a violation of the rules.

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 oral hearing was held;

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 has not violated the Agreement as claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 17th day of November, 1960.