Award No. 10316

Docket No. PC-10210

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen claims that Rules 30 and 24 of the Agreement between The Milwaukee Road and its Parlor Car Conductors were violated on October 7, 1957 when:

1. The Parlor Car Conductors' run on Milwaukee train 3-15, line 115, and train 6-16, line 103, between Chicago and Minneapolis was not re-bulletined, and persons holding no seniority as Conductors are permitted to perform Parlor Car Conductors' work on these trains.

2. The Organization now asks that Conductors F. W. Kuss and R. E. Michau, who, in accordance with their seniority, are entitled to this regular assignment on train 3-15, line 115, and on train 6-16, line 103, between Chicago and Minneapolis, be credited and paid not less than two and one-half days for each round trip they are deprived of operating in the above-outlined Conductor run. Conductor Kuss was scheduled to report on October 7, 1957 for train 3-15, and Conductor Michau was scheduled to report on October 8, 1957 for train 3-15, and for each subsequent date that they are not permitted to work in the above-outlined run, as provided in the rules of the Agreement.

3. The Organization charges that Rules 14, 32, and the Memorandum of Agreement, signed on April 5, 1955, have also been violated.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of January 1, 1951, and a Memorandum of Agreement, dated April 5, 1955, on file with your Honorable Board and by this reference is made a part of this submission the same as though fully set out herein.

II.

In order to understand the issues involved in the present dispute, it will be necessary to provide, in some detail, background information on the opera-

seen that Trains 15 and 16 are scheduled but discontinued Trains 3 and 6 are not scheduled. We do not consider it necessary to furnish copies of the working time cards of the LaCrosse River Division, First and Second Districts as they reflect the same information. However, if your Board requires copies of those working time cards, we will attempt to secure copies and furnish them.

Numerous Board Awards have held it is not the function of your Honorable Board to render awards having the effect of writing new rules or amending language of existing rules but to the contrary, it is the function of your Board, under the Railway Labor Act, to render awards based on existing rules. The language in Section 2 of the Memorandum of Agreement dated April 5, 1955 (Carrier's Exhibit "A") on which the employes rely, is unambiguous and cannot be interpreted in any other manner than that the parties agreed only that if a new train were substituted for Train 6, the obligation of the Carrier to use a parlor car conductor with only one parlor car in service on such train would continue and unless a new train were substituted for Train 6, that obligation would not exist. A new train was not substituted for Train 6 nor was a new train substituted for Train 3.

There is no requirement under the schedule rules for the use of a parlor car conductor on trains carrying only one parlor car in service. Only one parlor car is in service on Trains 15 and 16.

In summary, Trains 15 and 16 which have been scheduled and operated between Chicago, Illinois and Tacoma, Washington continuously since 1911, handle only one parlor car in service between Chicago, Illinois and Minneapolis, Minnesota. Under the schedule rules there can be no question about the fact that a parlor car conductor is not required with one parlor car in service on those trains. The question involved in the dispute, therefore, is whether or not, under the provisions of the Memorandum of Agreement of April 5, 1955 (Carrier's Exhibit "A"), the Carrier is required to use a parlor car conductor even though only one parlor car is in service on those trains. The Memorandum of Agreement dated April 5, 1955 referred to provides that a parlor car conductor will be used on Train 6 and Train 3 when those trains have one parlor car in service and the Agreement also provides that this requirement will extend to a "new train substituted therefor". Train 16 (which has been in operation continuously since 1911) is not a "new train substituted" for Train 6 and Train 15 (which has been in operation continuously since 1911) is not a "new train substituted" for Train 3.

There exists no basis for the claim and we respectfully request a denial award.

All data contained herein has been presented to the employes.

(Exhibits not reproduced).

OPINION OF BOARD: This case involves the interpretation of an Agreement between the parties. While the Organization contends that Rules 30 and 24 were violated, an analysis of the record shows that before any consideration can be given to these rules it is necessary to interpret a memorandum of Agreement entered into between the parties in 1955.

In 1955, the Carrier determined to turn over all of its sleeping car operation to the Pullman Company. It therefore entered into a memorandum of Agreement eliminating reference to sleeping cars in Rule 52. In addition, the Carrier and its Organization agreed that under certain conditions parlor

car operations would be frozen. This Agreement was reduced to writing as Rule 52(b). This Rule provides:

> "So long as Train 6 (or a new train substituted therefor) carries at least one Milwaukee Railroad parlor car in service on which parlor car seat space is sold, a Milwaukee Railroad parlor car conductor shall be operated on that train during the period of time the train carries one such parlor car in service. The provisions of the previous sentence shall also apply identically in connection with Train 100 (or a new train substituted therefor) and Train 101 (or a new train substituted therefor). The protection afforded by this Item 2 shall only be applicable to parlor car conductors in the service of the Milwaukee Railroad as of April 16, 1955, and shall be limited to not more than three trains."

As can be noted, this Agreement applied to only three trains and the parlor car conductors were frozen on these trains, subject to the right of the Carrier to discontinue such trains. While there was a change in the number of one of the trains subsequently, two of the trains covered by the Agreement were train 3 and train 6 between Chicago and Minneapolis.

The Carrier also ran trains 15 and 16 between Chicago and Tacoma via Minneapolis. These trains left at a different time and were not subject to the 1955 Agreement.

In 1957, the Carrier began running only 2 trains which went to Minneapolis and then continued on to Tacoma and vice versa.

It is the contention of the Organization that these are in effect trains 3-15 and 6-16 and as such trains 3 and 6 have either not been abolished and therefore Rule 52(b) of the 1955 Agreement must be followed; or if 3 and 6 have been abolished, then that provision of Article 52(b) which provides that "as long as train 6 **(or a new train substituted therefor)**" (emphasis ours) is applicable.

The basic facts relied upon by the Organization is that the time table put out for the public continued to show trains 3 and 6 and that passengers boarding train 3 and train 15 were called to different gates.

In addition, the Organization points out that the trains 15 and 16 now stop at points previously not stopped at and that they were stops made by trains 3 and 6.

The Carrier contends that the sole reason for continuing to list trains 3 and 6 was to take advantage of the advertising and good will which had been built up over the years.

After a thorough consideration of the record and previous opinions of this Division and others, this referee has reached the conclusion that trains 15 and 16 are not new trains substituted for 3 and 6 nor is it felt that the fact the Carrier, for the purpose of advertising, continued to list trains 3 and 6 had the effect of keeping them in existence. While it is true that trains 15 and 16 do make stops which they had not previously made, it is felt that this alone is not sufficient to call trains 15 and 16 new trains in light of the fact that these particular trains have been in existence since 1911. Trains 15 and 16 not being trains covered by the 1955 Memorandum of Agreement, there is thus no violation of such memorandum. It is the judgment of this Division

that Award 11373 of the First Division is most clearly applicable. That Award held that there was no breach of the Agreement and such a disposition is the proper one in this case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.