

Award No. 10616

Docket No. PC-11404

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, 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, contends that The Pullman Company violated Rules 25, 47 and 64, and the Memorandum of Understanding found on pages 83-84 of the current Agreement, when:

1. On May 1, 1958, Conductors F. A. Manion, C. V. Swearingen and R. L. Janes of the Jacksonville district, who were regularly assigned to the conductor run on ACL trains 375 and 376 between Jacksonville, Fla., and Florence, S. C., were removed from their assignments.

2. We now ask that Conductors Manion, Swearingen and Janes be credited and paid in addition to all other earnings, for each trip they are denied the right to perform service on the conductor run on ACL trains 375 and 376 between Jacksonville and Florence.

3. We also ask that the extra conductors of the Jacksonville District who were entitled to perform the relief work in this run, be credited and paid for each trip they are denied the right to perform the relief work.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing an effective date of September 21, 1957, and amendments thereto 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.

For ready reference and convenience of the Board, Rules 25 (a), (c), 47 and 64 (b), and the Memorandum of Understanding Regarding Conductor and Optional Assignments are quoted as follows:

Rule 47. Reallocation of Runs states that except as provided in Rules 43 and 44 runs assigned to a district or agency shall not be reallocated to another district or agency without conference and agreement between Management and the General Chairman. This rule, however, is not applicable to this dispute inasmuch as no run was reallocated as alleged. The run to which Jacksonville conductors were assigned, Jacksonville-Florence, was discontinued on May 1, 1958. Effective the same date the Company exercised its option under Rule 64 (b) of operating conductors, porters in charge, or attendants in charge on trains carrying one Pullman car except under conditions not present in this dispute and set up a porter-in-charge operation Jacksonville-Savannah. The conductor run, effective May 2, 1958, between Savannah and Florence could not be assigned to Jacksonville conductors because Jacksonville was not a terminal or intermediate district of the run. The Savannah-Florence run was properly assigned to the Savannah Agency (Rule 46).

CONCLUSION

The Pullman Company has shown in this ex parte submission that on May 1, 1958, it exercised its option under Rule 64 (b) of discontinuing operation of conductors on the single car operation between Jacksonville and Florence on A.C.L. trains 376-375. The Company has also shown that the operation discontinued on May 1, 1958, was not a frozen operation covered by the Memorandum of Understanding Regarding Conductor and Optional Assignments. Finally, the Company has shown that it did not violate Rules 25, 47, 64 or any other rule of the working Agreement.

The claim is without merit and should be denied.

All data presented herein in support of the Company's position have heretofore been presented in substance to the employees or their representatives and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier prior to the origin of this dispute utilized conductors on ACL trains 80 and 89, known as lines 2002 and 2049. These runs operated between Jacksonville and Florence and between Atlanta — Fayetteville, respectively. Both of these runs were frozen pursuant to the terms of Memorandum of Agreement of 1949-50 between the parties herein.

In May of 1958, the Jacksonville-Florence Conductor operation was discontinued, and the Carrier originated an operation designated Line 2030 on ACL trains 376-375 with a porter in charge between Jacksonville and Savannah, also it set up a conductor operation between Savannah and Florence known as Line 2030 under Line 2030. The Carrier allegedly made these changes pursuant to Rule 64(b).

The Carrier on prior occasions has defined the terms "Lines" as being an accounting term which is unilaterally adopted.

In order to clarify disputes of this nature, it might be well to set forth our understanding of some of the terms mentioned in this claim as follows: (1) Runs are assignments of conductors between certain points; (2) Lines is a term adopted by the Carrier for accounting purpose, and the designation of such can be adopted unilaterally by the Carrier; (3) "Trains as defined by this claim are vehicles created by the Carrier for the conveyance of the public dependent upon their needs, and subject to public regulation. This also is a unilateral designation of the Carrier.

We note the following in Award 10140 which discussed a similar claim as follows:

"That the Carrier has the right to shorten, lengthen or discontinue runs in helping with contractual provisions is unquestioned. Neither can it be disputed that if a frozen run is shortened — the remaining segment is still a frozen run.

"There has been much discussion in this case whether conductors are assigned to lines on trains.

The record and previous awards strongly support the position that conductors are assigned to trains. In Award No. 2762 Referee Parker stated, ' . . . the parties understood conductor operations were made up of trains and the conductors were assigned to trains, trains which were designated and identified not by the Pullman Company, but by the railroad over which its cars operate.' In Award 4007 — Mr. H. R. Lary, the Pullman's Company's Supervisor of Industrial Relations stated: "While conductor operations are designated by line number for accounting purposes, conductors are in reality assigned to trains rather than to particular Lines." "Accordingly, it is our determination that conductors are assigned to trains not lines."

In the instant case, the run which is the subject of the dispute is one of the 52 runs covered by the Memorandum of Understanding, and there is still a run operating on Train 375 - 376 between Jacksonville and Fayetteville, the train operates on substantially the same schedule as trains 80-89 of the ACL. Thus in fact the same run was still in existence, although there were changes in both line and train numbers. We cannot accept this as a legitimate circumvention of the Memorandum of Understanding.

Carriers actions in this matter are not within the provision of Rule 64(b) for it is not outside of the exception provided by said rule.

It is therefore apparent that the runs are the result of the mutual understanding between the parties.

In summary we conclude that the frozen run incorporated in the Memorandum of Understanding is still in existence, and as long as it exists a conductor shall be assigned to it.

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 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 has been violated.

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 May 1962.

**CARRIER MEMBERS' DISSENT TO AWARD NO. 10616
DOCKET NO. PC-11404**

Award 10616 is in error in holding that conductors are assigned to trains and not lines and then proceeding to ignore the much emphasized fact that at the time the Memorandum of Understanding Regarding Conductor and Optional Assignments was executed in 1945, A.C.L. trains 80-89 and A.C.L. trains 375-376 both were in existence. Frozen Line 2002 was carried on A.C.L. trains 80-89 and handled by Jacksonville District conductors. At the same time, a Washington District conductor operation designated Line 2037, A.C.L. trains 375-376, which carried three Pullman cars between Washington-Miami, was in effect. Since Line 2037 was a multi-car operation, it was in no way affected by the Memorandum. Further, frozen Line 2002 was discontinued July 7, 1946, on the same date that A.C.L. trains 80-89 were discontinued. Thus, Award 10616 cannot logically ignore the fact that the discontinuance of the frozen run (Line 2002) and of the trains that handled the run (A.C.L. trains 80-89) on July 7, 1946, cancelled the Agreement between the parties relative to a frozen run on A.C.L. trains 80-89.

Further, Award 10616 ignores specific language in the Agreement between the parties upon which the decision should have been predicated; for example, Rule 64 (b) sets forth that Management shall have the option of operating conductors, porters in charge, or attendants in charge, interchangeably, from time to time, on all trains carrying one Pullman car, either sleeping or parlor, in service; "except with respect to certain conductor operations as specifically covered in the Memorandum of Understanding Regarding Conductor and Optional Assignments re-executed at Chicago, Illinois, September

21, 1957." (Emphasis ours.) Reference to Appendix A of the Memorandum establishes that the parties specifically described the frozen run by line number, by terminals of the line, by train numbers. In the face of this clear handling of the matter by the parties in 1945, Award 10616 holds that the run in Line 2002 is still a run operating on trains 375-376 between Jacksonville and Fayetteville. The Award also ignores the language in paragraphs 1, 3 and 4 of the Memorandum of Understanding, referring to the runs listed in the Appendix of the Memorandum. Thus, the Award rejects the efforts of the parties in negotiation to define in precise language their intent with regard to frozen runs.

On the basis of the facts in this Docket it is quite apparent the intent of the parties was to restrict Management's right under Rule 64 (b) to the degree specifically covered in the Memorandum of Understanding. The restriction applies solely to the specific runs enumerated either in Appendix A or Appendix B, attached to the Memorandum of Understanding. All the other runs not specifically enumerated were free of this restriction. There is nothing in the Memorandum of Understanding that modifies the option granted to the Carrier under Rule 64. It follows, therefore, that it is sound to say that conductor runs not specified are free of any restriction contained in the Memorandum of Understanding. The point is indisputable that neither A.C.L. trains 376-375 nor Line 2030 appears in the Memorandum of Understanding and the Award is in serious error in holding that the operation discontinued May 1, 1958 was frozen.

For the reasons herein set down, among others, we dissent.

/s/ **R. E. Black**
R. E. Black

/s/ **R. A. DeRossett**
R. A. DeRossett

/s/ **G. L. Naylor**
G. L. Naylor

/s/ **W. F. Euker**
W. F. Euker

/s/ **O. B. Sayers**
O. B. Sayers

LABOR MEMBERS' REPLY
TO
CARRIER MEMBERS' DISSENT
TO AWARD NO. 10616

Carrier members' dissent is merely a reiteration of the arguments presented to the Referee in panel discussion.

Because such arguments have already been carefully considered by the Referee and rejected, the dissent can have no effect whatsoever upon the Award.

This member concurs wholeheartedly in the decision of the Referee.

R. H. HACK
Labor Member