

Award No. 10617

Docket No. PC-11405

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, claims pay for and in behalf of Conductors V. E. Compton, N. Parsons and T. E. Talley of the Dallas District, who were regularly-assigned to the conductor run on Frisco trains 518 and 517 from Dallas, Texas to Tulsa, Oklahoma, under date of March 23, 1959, and who were unilaterally removed from their assignments.

We also ask that extra conductors of the Dallas District, who would be entitled to perform the relief work in the conductor run on Frisco trains 518 and 517 between Dallas and Tulsa (record to be checked to determine the extra conductors involved), be credited and paid under the applicable rules for each trip they are denied the right to perform the relief work in this run subsequent to March 23, 1959.

In the event one or more of these three regularly-assigned men above referred to should retire or leave the service of the Company, we ask that the conductors of the Dallas District, who would be entitled to perform the work under the applicable rules, be credited and paid for all work denied them.

We contend that when under date of March 23, 1959 The Pullman Company removed Pullman Conductors Compton, Parsons and Talley from the conductor run on Frisco trains 518 and 517 between Dallas and Tulsa, that the Company violated Rules 25, 64 and the Memorandum of Understanding Regarding Conductor and Optional Assignments and the Appendices A and B thereto; also Rule 68.

Because of these violations of the Agreement between The Pullman Company and its Conductors, we now ask that the conductors of issue be credited and paid for each trip, under applicable rules, they are denied the right to perform conductor work on Frisco trains 518 and 517 between Dallas and Tulsa subsequent to March 23, 1959.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, with an effective date of September 21, 1957. This Agreement is on file with your Honorable Board

run is still in existence and will remain so as long as a Pullman car is operated on Frisco trains 508, 507 or 518, 517 between Dallas and Tulsa, and that the Company's "practice" between 1953 and 1959 in some unclear manner superseded Rule 64 (b) and changed the Dallas-Tulsa run into a frozen operation. The Company has shown that these arguments do violence to the clear terms of the Memorandum and Rule 64 (b), which provisions clearly support the Company's action in this case.

CONCLUSION

The Pullman Company has shown in this ex parte submission that on March 23, 1959, it exercised its right under Rule 64 (b) of discontinuing operation of conductors on the single car operation between Dallas and Tulsa on Frisco trains 518, 517. The Company has also shown that the operation discontinued on March 23, 1959, 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 any of the rules of the Agreement cited by the Organization or any other rule of the 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 facts in this claim are at variance with those in Award 10616, but an examination of the records of both dockets indicate to this Referee that the operation terms utilized by the Organization and Carrier are the same, although like in all controversial situations each party places a different interpretation on their meaning and application.

However, we have ascertained from our prior examination of Award 10616 that the following terms should be recognized in order to render a final determination of the issues involved in the instant claim, and they are as follows: (1) "Runs" are assignments of Conductors between certain designated points; (2) Lines is a term adopted by the Carrier for accounting purposes, and the designation of such can be adopted unilaterally; (3) Trains as defined in 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.

All of the foregoing terms are applicable to the factual situation presented herein.

The center of controversy is over frozen run listed in Appendix B of the Memorandum of Understanding designated as Frisco trains 508, 507, Line 3392, Fort Worth-Tulsa.

In May of 1951, Frisco trains 508 and 509 were substituted with trains 518 and 517. Both prior and subsequent to the change, these trains were advertised to the public as the "Black Gold". The line numbers were changed, but the Ft. Worth District Conductors continued to operate the run. In July of 1953, the Pullman cars were eliminated on trains 518 and 517, and the run

was shortened to operate between Dallas and Tulsa. The conductor run was bulletined in the Dallas District pursuant to rules 25, 31 and 33.

On the form entitled "Operation of Conductors" there appeared in July 1953 the following statement:

"New operation for Dallas Conductors account of Ft. Worth Conductors withdrawn with the discontinuance of line 3392, Ft. Worth-Tulsa. No sleeper now on train between Ft. Worth and Dallas."

We are of the opinion that Award 4007 can be of an aid in determining whether conductors are assigned to trains or lines. In this particular award the Carrier states as follows:

"In an effort to establish the validity of its claim, the representative of the Organization contended in the hearing of April 10, 1947, that the Chicago Northern District conductor operation on train No. 22 is designated as Line 305, which Line was carried on the first section of train No. 22, leaving Omaha February 3, 1947, rather than on the second section to which the Chicago Northern District conductor was assigned. The Organization very well knows, however, that there is no merit to this argument. While conductor operations are designated by line numbers for accounting purposes, conductors are in reality assigned to trains rather than to particular Lines. In fact, the Organization has in the past acknowledged that conductors are assigned to trains rather than to any particular line or lines."

We also find in the Organization's submission a quotation from a letter from the Supervisor of Industrial Relations for the Pullman Company to the Secretary of the Third Division, Railroad Adjustment Board, the following quotation:

". . . Pullman conductors actually are assigned to particular trains rather than to particular lines. A conductor operating in a particular assignment may handle many lines. Solely for the purpose of identification, one of the Pullman lines handled in a particular conductor assignment is designated as the 'key' line and the number of the 'key' is used to identify the particular conductor operation. The conductor's work, however, is not restricted to that 'key' line alone. He must handle all the Pullman conductor work on the train for all of the lines designated on the operating form for that particular assignment."

These two instruments, the cited award and the foregoing letter corroborate the fact that Conductors are assigned to trains and not lines.

We are of the opinion that when trains 517 and 518 were substituted for trains 508 and 507 this did not eliminate the Agreement between the Organization and the Carrier.

A run was shortened and a train was substituted but this did not eliminate the frozen run from its prior status.

We cannot accept the action of the Carrier as a legitimate circumvention of the Agreement establishing the frozen run.

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

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. 10617
DOCKET NO. PC-11405

Award 10617 is in error in concluding that the operation on Frisco trains 518-517, Line 3390, Dallas-Tulsa, discontinued by the Carrier March 23, 1959, is the run described in the Memorandum of Understanding. The run in the Memorandum was specifically described by the parties in 1945 as Line 3392, trains 508-507. This frozen run handled by Fort Worth conductors was discontinued in its entirety July 16, 1953. The record shows that on that date the Carrier set up a new run on Frisco train 518-517 which it awarded to the conductors of the Dallas District under the provisions of Rules 46 and 31. In this connection, the Award ignores the fact that at the time the Memorandum of Understanding was executed in 1945, Frisco trains 508-507 also carried a non-frozen car, Line 3393, Dallas-Tulsa. The Dallas-Tulsa line was never listed in the Memorandum of Understanding and was at all times a non-frozen operation. The fact becomes transparent therefore that when the Carrier discontinued frozen run 3392 on July 16, 1953, it did not shorten the run to Dallas as Award 10617 holds but actually discontinued Line 3392 between its terminals, Fort Worth-Tulsa. Otherwise, on and after July 16, 1953, two lines would have been carried between Dallas and Tulsa, since there is no showing in the record that the non-frozen line 3393, Dallas-Tulsa, ever was discontinued. The record shows that Line 3393 was changed on May 30, 1950 to Line 3439 and to Line 3390, effective May 20, 1951, but nothing more. On the basis of the facts of record, therefore, it is illogical to conclude other than that on July 16, 1953, the operation designated Line 3392 was discontinued in its entirety and a new operation designated Line 3390 was set up between Dallas and Tulsa, which run was never frozen.

Award 10617 is also seriously in error in holding that the Dallas-Tulsa run was bulletined in the Dallas District in accordance with Rules 25, 31 and 33. The record indisputably shows that **Rule 46. Assignment of Runs to Districts** was applied to determine which district should operate the run — Tulsa

or Dallas (the terminal districts) or an intermediate district. If **Rule 33. Re-bulletining Changed Runs** was applicable, Fort Worth conductors would have been entitled to bid on the new operation. Awards of this Board support this interpretation of Rules 46 and 33. Thus, Award 10617 should set forth that the new conductor run was bulletined in the Dallas District in July, 1953, in accordance with Rules 25, 31 and 46.

Further, Award 10617 is in error as was Award 10616 in negating the fact that the parties included line numbers in the Memorandum of Understanding to designate specific one car conductor runs which were 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. 10617

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