

Award No. 10711

Docket No. PC-11407

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,
PULLMAN SYSTEM**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor R. E. Michau that under the date of January 4, 1959, the Milwaukee Road violated Rules 22, 33 and 49 of its Agreement with its Parlor Car Conductors, when:

1. On January 4, 1959, C.M.St.P.&P. train No. 5, which is covered by an Operation of Conductors form, was operated from Chicago, Ill., to Minneapolis, Minn., without the services of a Parlor Car Conductor.
2. We now ask that Conductor R. E. Michau, who was available for this assignment under the provisions of Rule 33, be credited and paid not less than 1¼ days for the trip from Chicago to Minneapolis, because of this violation.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties bearing an effective date of October 16, 1957, 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, the most pertinent parts of Rules which are directly applicable to this dispute are quoted as follows:

"RULE 22. Basic Seniority Rights and Date. (e) The right to perform all parlor car conductors' work arising in the seniority district as established by past practice and custom, shall belong exclusively to the parlor car conductors having seniority in such district, subject to the exceptions of these rules herein otherwise contained.

Rule 22 describes the manner in which seniority rights shall be required and the territory in which such rights shall apply. It has no application to the question here at issue.

Rule 33 (c) designates what shall constitute the regular signout period and, like Rule 22, has no application to the question at issue.

Rule 33 (e) provides the manner in which extra conductors shall be assigned where a determination must be made as to which such employee is to be called in cases where more than one extra board conductor is available. In the instant case Claimant Michau was the only extra board conductor, thus Rule 33 (e) has no application to the case in question.

Rule 49 (b) and (c) state in clear and unambiguous terms that the assignment of a parlor car conductor on trains consisting of only one parlor car is optional to the Carrier, or in other words, is not a requirement under the parties' agreement. Therefore, we fail to see any basis whatsoever for an alleged violation of Rule 49.

It is the Carrier's position that where the parties here in dispute have agreed that the services of a parlor car conductor are not required on trains carrying only one parlor car in service and therefore, the non-use of parlor car conductors on such trains is not in violation of the parties' agreement, then there can be no cause to assert a lost earnings claim in behalf of a parlor car conductor in such cases under other rules of the agreement. We therefore respectfully request that the claim be denied.

All data contained herein has been made known to the employees.

OPINION OF BOARD: Claim is made that on January 4, 1959 the Carrier violated Rules 22, 33 and 49 of the Agreement between the parties, when train No. 5 was operated from Chicago, Illinois to Minneapolis, Minnesota without the services of a parlor car conductor.

Train No. 5 departed Chicago at 10:30 A. M. on January 4, 1959. Train 15 departed Chicago at 1:00 P. M., Sunday January 4, 1959. Train No. 5 carried one Milwaukee parlor car and Train No. 15 carried two Milwaukee parlor cars. The Claimant who was the only available extra conductor was called and accepted during the 10:00 A. M. signout period on Saturday, January 3, the assignment to train 15 on Sunday, January 4, 1959.

The pertinent parts of the rules involved in this case read as follows:

"RULE 22. Basic Seniority Rights and Date. (e) The right to perform all parlor car conductors' work arising in the seniority district as established by past practice and custom, shall belong exclusively to the parlor car conductors having seniority in such district, subject to the exceptions of these rules herein otherwise contained.

"RULE 33. Operation of Extra Conductors. (a) All extra work, including work arising at points where no seniority roster is maintained, shall be assigned to the extra conductors when available.

"(c) A regular signout period shall be established at which time all known assignments shall be made for the succeeding 24 hour period. The signout period shall not be less than 30 minutes nor more than 2 hours in length. The local chairman shall be notified by the

Superintendent at least 5 days in advance of any change in the sign-out period and bulletins shall be posted for the information of conductors.

“(d) Road service assignments and deadhead assignments shall first be grouped and extra conductors shall be assigned in accordance with the provisions of Paragraph (c) of this rule. Thereafter station duty assignments shall be assigned to extra conductors in accordance with the provisions of Paragraph (e) of this rule.

“(e) Until credited and assessed hours have been acquired in the current month, extra conductors shall be assigned in accordance with their credited and assessed hours for the preceding month, the conductor with the least number of such hours to be assigned first, continuing until all conductors in this group have been assigned, after which the extra conductors shall be assigned in accordance with their credited and assessed hours in the current month, the conductor with the least number of such hours to be assigned first.

Question 1 — What is meant by “Available” as used in this rule?

Answer 1 — “Available” means that an extra conductor entitled to an assignment during the established signout period is “available” when he can be contacted during the established signout period, assigned and can reach the point where he is required to report by scheduled reporting time. An extra conductor who reports at his home terminal after the assignments have been made for the day, shall not be privileged to displace any of the conductors already assigned

“When an assignment occurs after the close of the established signout period the extra conductor entitled to the assignment is “available” if he can be contacted and assigned and can reach the point where he is required to report by scheduled reporting time, however, in the event he cannot be contacted prior to two (2) hours before reporting time of the assignment, he shall be considered “unavailable.”

“An extra conductor who has been granted permission to be marked off the extra board shall be considered “unavailable” for the period marked off.

Question 3 — When an extra conductor makes a trip in regular assignment, how shall his hours be credited in the record as kept under Paragraph (k) of this rule?

Answer 3 — He shall be credited with the actual hours worked.

“Rule 49. Conductor and Optional Operations. (a) Milwaukee parlor car conductors shall be operated on all trains while carrying, at the same time, more than one Milwaukee parlor car, in service, except as provided in paragraph (c) of this rule.

“(b) The Management shall have the option of operating parlor car conductors, porters in charge or attendants in charge interchange-

ably, from time to time, on all trains carrying one Milwaukee parlor car in service.

"(c) The Management shall have the option of operating parlor car conductors, porters in charge or attendants in charge, interchangeably, from time to time, on all trains where there is a combined service movement of two Milwaukee parlor cars of any type in which seat space is held, having one or both terminals different, and such combined movement is for a period of less than five hours, railroad scheduled time.

"Under the foregoing paragraphs (a) to (c), private cars shall not be considered for any purpose as parlor cars.

"(d) The Management shall have the option of using parlor car conductors, porters in charge or attendants in charge, interchangeably, from time to time, for collecting Milwaukee parlor car tickets and cash fares for a car or cars operating on trains as provided in paragraphs (b) and (c) hereof, and for cars at outlying or passing points which will be in charge of a parlor car conductor leaving such points, except that a parlor car conductor will be used to collect Milwaukee parlor car tickets and cash fares at a passing point for two or more cars which are being loaded at the same time in the same station prior to attachment to through trains on which Milwaukee parlor car conductors are operated.

"Rule 26 — Posting Seniority Rosters.

"(a) New runs, temporary runs, each assignment in a run that has preferred assignments, vacancies and seasonal runs known to be of more than 30 days' duration shall be promptly bulletined for a period of 10 days at the point where the seniority roster is maintained. Conductors desiring to bid for such runs or assignments shall file their applications with the designated official within the time during which they are posted, and awards shall be made within 5 days thereafter on the basis of seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. Conductors bidding on more than one bulletined run or assignment shall specify in their applications their first choice, second choice, etc.

"(f) Details of all regular assignments such as, length of lay-over, periods at home station and at away-from-home station and train numbers shall be shown in bulletin at the time runs are posted for bid."

The Carrier contends that under Rule 49 of the Agreement it was not required to have a conductor on Train No. 5 because it carried only one parlor car. Further it contends that at the regular signout time on January 3, 1959, there were two runs Train 5 and 15 which were due out of Chicago on January 4, 1959 with but one extra Board Conductor available. Further Carrier contends that because Train No. 5 having but one parlor car did not require the services of a conductor whereas Train No. 15 had two parlor cars which did require a conductor, it had the right to assert its management prerogative to assign the only extra conductor to Train 15.

The Organization claims that Train No. 5 had been bulletined and a conductor regularly assigned to it with an "operation form" in effect. That

since the train had been assigned to carry a conductor regularly the option under Rule 49 (b) is inapplicable.

Although the facts are somewhat different the same principle and same issue involving the same parties was the subject of a sustaining award by this Board. In Award 7665 this Board held that while the rule makes optional the placing of parlor car conductors on trains containing only one car that the option was inapplicable since both trains involved had been bulletined and assigned to carry a conductor.

The principle enunciated in the above award in our opinion is the same as that in the case at hand and is a precedent that should be followed in this award.

It is our opinion that the Carrier's action in blanking the conductor operation on Train No. 5 on January 4, 1959 violated the Agreement.

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 was violated.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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