

Award No. 10733
Docket No. PC-11256

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, 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 the Memorandum of Understanding Regarding Conductor and Optional Assignments and Rules 25, 64 and 68 of the Agreement between the parties, when:

1. Under date of June 26, 1958, The Pullman Company removed Conductor E. J. Brimmer, St. Louis District, from the conductor run on Wabash Railroad Company trains 11 and 14-18, designated as line 3558 between St. Louis, Mo., and Moberly, Mo.
2. We now ask that Conductor Brimmer be credited and paid for each trip, under the terms of the Memorandum of Understanding Concerning Compensation for Wage Loss, that he is deprived from operating in the above-mentioned run.
3. We also ask that Conductor H. J. Winzen, regularly assigned relief conductor on Wabash trains 11 and 14-18 and IC trains 205 and 16, who was entitled to perform the relief work, be credited for each trip that he has been denied the right to perform this work subsequent to June 26, 1958.

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, Rule 25 (a), (c), Rule 64 (b), and the Memorandum of Understanding Regarding Conductor

CONCLUSION

The Pullman Company has shown in its ex parte submission that on June 26, 1958, it discontinued operation of conductors on a single car run between St. Louis and Moberly and that this action was in conformity with Rule 64 (b) of the working Agreement. The Company has also shown that Line 3558 was not a "frozen" run covered by the Memorandum of Understanding Regarding Conductor and Optional Assignments and that the Company did not violate this Memorandum. Finally, the Company has shown that it did not violate Rules 25, 64, 68 or any other rule of the Agreement.

The claim 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: This is a so-called "frozen-run" case.

Effective September 1, 1945 (and later re-executed to be effective September 21, 1957) the Pullman Company and its conductors, represented by the Order of Railway Conductors and Brakemen, entered into an Agreement, providing in part in Rule 64, that Pullman conductors shall be operated on all trains while carrying at the same time more than one Pullman car in service. Paragraph (b) of Rule 64 provides that the Company had the option of operating conductors or porters-in-charge, interchangeably, on all trains carrying only one Pullman car in service, except with respect to certain one-car operations (frozen runs) specifically covered in a Memorandum of Understanding signed by the parties at Chicago on August 8, 1945.

The Memorandum of Understanding, in connection with Rule 64 (b), provided that the one Pullman car runs listed in Appendices A and B of that Memorandum would "continue to be operated in charge of conductors for as long as such runs remain in existence;" that if any such one-car run was shortened it would "continue to be operated by conductors between the new terminals;" that if any such run was lengthened, it would "continue as a conductor operation at least between the terminals to which conductors operated at the time the run was lengthened," and that "should any such run be discontinued and subsequently restored it would be a conductor operation."

One of the frozen one-car runs listed in Appendix B of the Memorandum of Understanding is described as Line No. 3571; Points Between Which Conductors Operate, St. Louis-Des Moines; Trains Wab. 11, 14, 18.

Westbound, this car from Line 3571 operated on Wabash Train 11 through St. Louis to Des Moines, via Moberly, and Eastbound, it operated on Wabash Train 14 from Des Moines to Moberly and on Wabash Train 18 from Moberly to St. Louis.

A car from Line 3558, which ran between St. Louis and Omaha via Moberly, was operated along with the Des Moines car of Line 3571 on Trains 11 and 18, respectively, in both directions between St. Louis and Moberly. This car was not frozen.

On September 25, 1954 the Wabash Railroad dropped the St. Louis-Des Moines Pullman car; accordingly, the conductor operation on this run was discontinued. A conductor continued to operate on Line 3558, however, between St. Louis and Moberly on Wabash Train 11 and Eastbound from Moberly to St. Louis on Wabash Train 18. Relief trips were performed by a St. Louis conductor assigned to a bulletined pool relief operation. Between Moberly and Omaha the car of Line 3558 was operated porter-in-charge in both directions.

In June 1958, the Pullman Company reviewed its conductor requirements and decided that operation of Line 3558 with both a conductor and porter-in-charge between St. Louis and Moberly was economically unsound. Accordingly, effective June 26, 1958, the Company discontinued operation of a conductor on this run.

The question to be decided in this dispute is whether the run between St. Louis and Moberly is a segment of the original frozen run between St. Louis and Des Moines, as contended by the Employees; or, whether this is a separate, not frozen, run growing out of the prior Line 3558 operation, which was part of the Line 3571 operation before that was discontinued, as contended by the Company.

The Employees give the following reasons, among others not considered to be relevant or probative, in support of their position:

1. Line numbers are used for accounting purposes and Pullman conductors are assigned to trains not lines. Earlier statements by Carrier officials and recent awards (10140 — Daly; 10578 — LaBelle; 10616 — Sheridan) substantiate this. If line numbers are controlling all the Company has to do is change the number to abolish all frozen runs without going to the trouble of negotiating for rule changes.
2. The frozen run on Wabash Trains 11, 14 and 18 was listed in Appendix B and not Appendix A because the conductors handled more than one car for a portion of a run.
3. Trains 11, 14 and 18 are still operating over the territory involved.
4. The run between St. Louis and Moberly was a conductor run for at least thirteen years, the last four of which were after the car on Line 3571 was discontinued.
5. The Memorandum of Understanding which froze certain runs was the compromise reached by the parties as a result of Employee complaints that conductors were being replaced by porters-in-charge for economy reasons.

The Company gives the following reasons, among others not considered relevant or probative, in support of its position:

1. Line numbers have more significance than train numbers in determining the scope of frozen one-car conductor operations. The line number is the key which identifies the "one-car operation" which was frozen on the trains listed.

2. The one-car of Line 3571 was frozen only for that portion of the round trip which comprised the one-car operation in Line 3571.

3. Appendices A and B were intended to make a distinction between the runs covered. Appendix A covers one-car operations for the complete round trip and Appendix B covers other one-car operations which are frozen for but a portion of the round trip.

4. An analysis of the operations involved shows that neither the complete assignment involving Trains 11, 14 and 18 to which conductors were assigned, nor the one-car of Line 3571 was frozen for the entire distance between St. Louis and Des Moines.

5. The guarantee of employment on the car of Line 3571 under the Memorandum of Understanding is plainly contingent upon the existence of the run. Accordingly, the guarantee ceased to exist on September 25, 1954 when the frozen car of Line 3571 was discontinued and a new run established.

6. The fact that the Company exercised its option to assign conductors to its new one-car operation between St. Louis and Moberly until June 26, 1958 did not establish a practice which nullified the option granted the Company under Rule 64(b).

The facts and contentions of the parties have been presented at length because the issue to be decided is difficult to understand and close in comparative merit. On balance, we think the Employees make a better case, and we adopt the substance of their arguments.

The principal difficulty with the Company's position is its contention that the one-car of Line 3571 was frozen only for that portion of the round trip which comprised the one-car operation in Line 3571.

Under Rule 64(a) a Pullman conductor was required on the run between St. Louis and Moberly, before the car on Line 3571 was discontinued, because the train (11 Westbound and 18 Eastbound) carried more than one Pullman car (the car on Line 3571 between St. Louis and Des Moines and the car on Line 3558 between St. Louis and Omaha). At Moberly the car on Line 3558 continued on to Omaha with a porter-in-charge (this was true both before and after the car on Line 3571 was discontinued). The car on Line 3571 continued on to Des Moines with a conductor in charge because the operation came within the exception to Rule 64 (b).

The exception was written into Appendix B rather than Appendix A. It could have been written into Appendix A if the parties had intended to make the Moberly-Des Moines run the "Points between Which Conductors Operate." In such case, this would have been a part of a line operated as a conductor run with the conductor in charge of a one-car round trip, and when the car on Line 3571 was discontinued there would have been no frozen run to justify a claim under our facts. But the parties wrote the exception into Appendix B between the points St. Louis and Des Moines. Only the points between Moberly and Des Moines needed protection at the time of the Memorandum of Understanding, because of the multiple car operation between St. Louis and Moberly. This would account for the exception being included in Appendix B, which covers operation where conductors are in charge of one car "for a portion of the trip."

The point of importance is that the **run**, concerning which a conductor was in charge of but one car for a portion of the trip, was between St. Louis and Des Moines. This is the run that was frozen. The operation between St. Louis and Moberly, accordingly, was a segment, or shortened run, of the original frozen run. Under the Memorandum of Understanding Regarding Conductor and Optional Assignments, the Company was required to operate this run with a conductor-in-charge. The claim, therefore, should be sustained.

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 Carrier violated the Agreement and the Memorandum of Understanding Regarding Conductors and Optional Assignments.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.

DISSENT TO AWARDS 10733 AND 10734, DOCKETS PC-11256 AND PC-11257

Awards 10733 and 10734 are in error in negating and nullifying the inclusion by the parties of the Line Number in Appendix B for designating the particular one-car conductor operation which was frozen by the Memorandum of Understanding Regarding Conductor and Optional Assignments. For this reason, among others, we dissent.

/s/ W. H. Castle

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ D. S. Dugan

/s/ T. F. Strunck

**LABOR MEMBER'S REPLY TO CARRIER MEMBERS' DISSENT TO
AWARDS 10733 AND 10734 — DOCKETS PC 11256 AND PC 11257.**

Carrier Members' dissent is merely a reiteration of the arguments presented to the Referee in panel discussion in this as well as in other disputes between the same parties involving the same issue and adjudicated in Awards 10140, 10578, 10616, 10617 and 10745.

Because such arguments have already been carefully considered and rejected by the Majority, the principle established by Award 10140 super has been reaffirmed many times by this Division and now constitutes a controlling precedent.

The Award is correct and the dissent in no way impairs its effectiveness.

H. C. Kohler, Labor Member
Third Division, NRAB