

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 Rules 25, 33, and 64, and the Memorandum of Understanding Regarding Conductor and Optional Assignments were violated when;

1. On November 16, 1958, the conductor run on N&W trains 21-15 and 16-22 was established to operate between Norfolk and Petersburg, Va., instead of establishing the run between Norfolk and Roanoke, Va.

We contend that the conductor run exists between Norfolk and Roanoke, and therefore, should be bulletined as a conductor run between these points.

2. We now ask that Conductors T. J. Ashworth and H. S. Hines, Norfolk District, who were entitled to the run in accordance with their seniority, be credited and paid, under the Memorandum of Understanding Concerning Compensation for Wage Loss, for each trip that they are denied the right to work on the conductor run between Norfolk and Roanoke, subsequent to November 16, 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, Rules 25 (a), (c), 33, points 1, 2, and 3, Rule 64 (b), and the Memorandum of Understanding

64 obligated the Company to assign conductors to certain one-car operations not listed in the Memorandum of Understanding Regarding Conductor and Optional Assignments but which, according to the Organization, were nonetheless frozen. In reply, the Company wishes to point out that the one-car operation which was discontinued November 16, 1958 on N&W trains 15-16 is not listed in the Memorandum and was never covered by the Memorandum. In fact, Rule 64 (b) supports the action of the Company in that it permitted Management to discontinue the use of conductors on the single car which operated on N&W trains 15-16 between Petersburg and Roanoke subsequent to November 16, 1958.

Rule 33. Re-bulletining Changed Runs provides in pertinent part that any change of terminals in a run shall require runs to be re-bulletined and that all assignments therein shall be bulletined as provided in Rule 31. Apparently the Organization is contending that the Company was obligated to bulletin a run Norfolk-Roanoke and that failure to bulletin such a run was in violation of Rule 33. However, the Organization has not shown and cannot show that a conductor run existed between Norfolk and Roanoke; therefore there has been no violation of Rule 33.

Rule 25. Basic Seniority Rights and Date provides that in any district the right to perform all conductors' work shall belong exclusively to conductors having seniority rights in that district. Apparently the Organization is taking the position that porters could not displace conductors or perform "conductor work" on the car operating on N&W trains 15-16 between Petersburg and Roanoke without violating the seniority of conductors in the Norfolk Agency. In reply the Company wishes to point out that Rule 25 is applicable only when conductor work is present. In the case at hand no conductor work was present. Rule 64 (b) of the working Agreement granted Management the right to operate porters in charge on the one-car operation between Petersburg and Roanoke.

CONCLUSION

The Pullman Company has shown in this ex parte submission that on November 16, 1958, it exercised its right under Rule 64 (b) of discontinuing operation of conductors on the single car operation between Petersburg and Roanoke on N&W trains 15-16. The Company has also shown that the operation discontinued on November 16, 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, 33, 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 parties have stipulated that with the exception of the location and dates involved the issue in dispute here is identical to the dispute in Award 10733.

Accordingly, the opinions and findings contained in Award 10733 are dispositive of the issues in the claim before us.

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 *supra* 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