

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, 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 for and in behalf of Conductor F. A. Manion, Jacksonville District, who was regularly assigned to the conductor run on Atlantic Coast Lines trains 18 and 17 between Jacksonville, Fla., and Albany, Ga., and who was removed from this run by The Pullman Company on June 26, 1958.

We now ask that Conductor Manion be credited and paid under the applicable rules of the Agreement for each trip that he is denied the right to operate in this run until such time as the run is discontinued, or until Conductor Manion is returned to the run to which he is entitled.

We contend that by removing Conductor Manion from the assignment above referred to that the Company violated Rules 25, 64, and the Memorandum of Understanding Regarding Conductor and Optional Assignments, and appendices thereto.

We also ask that extra conductors P. Goldsmith, A. W. Brown, C. H. Poppell, G. L. Wade, W. E. Wall, M. H. Sewell, H. R. Altman, and G. R. Warn be credited and paid, under the applicable rules of the Agreement, for each relief trip they are denied the right to operate in the conductor run on Atlantic Coast Lines trains 18 and 17 between Jacksonville, Fla., and Albany, Ga. (Records to be checked to determine which relief trip the extra conductors noted above are entitled to.)

Rule 68 is also involved.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of September 21, 1957, and amendments thereto, on file with your Honorable

In its claim to the Board (Exhibit G) General Chairman Wise also cited **Rule 25. Basic Seniority Rights and Date**, which rule had not been previously cited. Rule 25 provides that in any district the right to perform all conductor work shall belong exclusively to conductors holding seniority rights in that district. Apparently Mr. Wise is taking the position that porters could not displace conductors or perform "conductor work" on the car operating on A.C.L. trains 18-17 between Jacksonville and Albany without violating the seniority of conductors in the Jacksonville District. 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 Jacksonville and Albany. When the Company discontinued the operation of conductors on A.C.L. trains 18-17 between these points on June 26, 1958, Rule 25 was not violated.

CONCLUSION

The Pullman Company has shown in this ex parte submission that on June 26, 1958, it exercised its right under Rule 64 (b) of discontinuing operation of conductors on the single car operation between Jacksonville and Albany on A.C.L. trains 18-17. The Company has also shown that the operation discontinued on June 26, 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, 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: Rule 64 provides, in part, that (1) conductors shall be operated on all trains which carry, at the same time, more than one Pullman car in service, (2) Management has the option of operating either conductors or porters-in-charge, interchangeably, on all trains carrying only one Pullman car "except with respect to certain conductor operations as specifically covered in the Memorandum of Understanding Regarding Conductor and Optional Assignments . . ."

The Memorandum referred to (originally drawn in 1945) provides, in part, that:

"... The one Pullman car runs listed in Appendix A . . . shall continue to be operated in charge of conductors for as long as such runs remain in existence. Should any such run be discontinued and subsequently restored it shall be a conductor operation."

The 1945 Memo also provided that any run listed in Appendix A will continue to be operated by conductors in the manner specified, if (1) the line is shortened, (2) the run is lengthened.

Appendix A contains two tables, one captioned "Parts of Lines Operated as Conductor Runs with the Conductor in Charge of One Car Round-Trip." The dispute in this case concerns the following Conductor Run listed in this table of Appendix A:

"Line No. — 7204
Terminals of the Line — Jacksonville — Cincinnati
Points between Which
Conductors Operate — Jacksonville — Atlanta
Trains — A.C.L. 18
C. of Ga. 17"

In 1945 Trains 18-17 were operated in two sections. The first section (known as the "Dixie Limited") ran from Jacksonville to Chicago via Atlanta (over the A.C.L., C. of Ga., N.C.&St.L., L.&N. and C.&E.I.) Line 263, on this section, was operated by Jacksonville conductors (it contained several cars) but was not "frozen" and was not included in Appendix A. The second section (known as the "Flamingo"), which ran from Jacksonville to Cincinnati, also was operated by Jacksonville conductors between Jacksonville and Atlanta. A single Pullman car, designated Line 7204, was attached to this second section.

During the years subsequent to 1945 the following changes were instituted:

June 10, 1947. The second section of Train 18-17 was discontinued. The car in Line 7204 was placed on the first section in charge of Jacksonville conductors assigned to Line 263.

March 1, 1949. The car in Line 7204 was discontinued.

June 13, 1949. The entire conductor operation on Trains 18-17 was discontinued. From June 1949 until January 15, 1950 no Pullman cars or conductors operated on these trains.

January 15 1950. Pullman cars from "Seminole" Trains 9-10 and 95-94 (I.C.-C.of Ga. and A.C.L., operating between Chicago and Jacksonville) were placed on A.C.L. Trains 18-17 between Albany and Jacksonville. Chicago South conductors continued to be assigned after the change.

Summers of 1950-1953. Only one Pullman car was operated; but Chicago South conductors were assigned from Chicago to Jacksonville because of possible extra Pullman cars.

Summers of 1954-1957. Chicago South conductors on Trains 18-17 were terminated at Birmingham. Jacksonville conductors were assigned between Jacksonville and Albany.

Winters of 1950-1956. More than one Pullman car was operated on Train A.C.L. 17. Chicago South conductors were assigned, Chicago to Jacksonville.

In December 1957, the Pullman cars were transferred to another train and Chicago South conductors did not operate Train 17.

June 26, 1958. Jacksonville conductors, who had handled the single Pullman car on Trains 18-17 between Jacksonville-Albany, were replaced by a porter-in-charge. This action led to the claim now before us.

The question to be determined here, essentially, is whether the June 1958 one-car Jacksonville-Albany run was "frozen" by the parties' 1945 Memorandum of Understanding. Petitioner believes this run was part of the original Jacksonville-Atlanta run on Trains 18-17. The Company, on the other hand, maintains that, when Line 7204 was discontinued, its obligations under the Memorandum ceased, particularly in light of the fact that this Memorandum applied only to the one-car operation on the **second section** of Train 18-17.

It is difficult to determine whether in 1945 the parties intended to freeze a one-car conductor operation on Trains 18-17 or only on the second section of Trains 18-17. Appendix A, clearly, did not contain a specific reference to a second section, although the parties knew that Trains 18-17 carried two sections between Jacksonville and Atlanta. It may be inferred, therefore, not without reason, that it was the parties' desire to freeze any one-car Pullman operation on Trains 18-17 between these two points. Several Board decisions, moreover, underline the fact that the 1945 Memorandum freezes runs, not cars or lines, and that conductors are assigned to trains, not lines. (cf. Awards 10140, 10616, 10617 and 10578.)

On the other hand, none of these cited Awards considered the precise question of a two-section train. Nor is it illogical to argue that each section, in effect, constituted a separate train, especially since they headed in different directions after reaching Atlanta.

Under these circumstances, with persuasive arguments on both sides, it is appropriate to examine what the parties have actually done during the period 1945-1958 in order to help determine their mutual intent. In our estimation the following facts, revealed in the record, are significant.

1. On August 18, 1945 the Company issued two Conductor Operation Forms, one for Line 7204 (one car) and another for Line 263 (four cars). Both, however, contained the same train numbers (18-17) and both show the Jacksonville departure time of Train 18 as 7:30 A. M.

2. In 1954, when the Company executed a new Conductor Operation Form (dated April 30) covering Line 524, a Jacksonville-Albany run on Trains 18-17, it specifically noted: ". . . new form account only one car on train necessary operate conductor in State of Florida **and to comply with Appendix A of Conductors' Agreement.**" (Emphasis added.) The only run on Train 18-17 mentioned in Appendix A is the one here in question.

3. On September 6, 1955, again in connection with Line 524, the Company wrote on a new Conductor Operation Form: ". . . prepared in accordance with previous Conductors' Agreement, Memorandum of Understanding . . ."

4. On April 22, 1956, also in regard to Line 524, the Company stated on a Conductor Operation Form: "New form account only one car on this train. **This portion of train coming under provisions set forth in Memo-**

Memorandum of Understanding Regarding Conductor and Optional Assignments.”
(Emphasis added.)

5. On April 16, 1957 the Company issued another Conductor Operation Form containing the same explanation used in 1956.

This evidence shows that during the years 1954 through 1957 Management considered itself obligated, under the Memorandum of Understanding, to assign a conductor, rather than a porter-in-charge, to the Jacksonville-Albany run on Trains 18-17 when only one Pullman car was in operation. While the Company now argues that the decision to use a conductor was a voluntary one, its repeated written statements, in our opinion, are more convincing.

In sum, while sound arguments exist on both sides, it is our conclusion that, on balance and in light of the above considerations, this claim should be sustained. In other words, based on the available record, we find that Management violated Article 64 and the Memorandum of Understanding when, in 1958, it removed a conductor from the one-car Jacksonville-Albany operation which represented a shortened version of the Jacksonville-Atlanta one-car operation “frozen” in 1945.

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 Employee involved in this dispute are respectively Carrier and Employee 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 3rd day of August 1962.

CARRIER MEMBERS DISSENT TO AWARD 10745
DOCKET PC-11205

Award 10745 is in error in ignoring the pertinent fact that in 1945 the parties froze Line 7204 on a specific train the “Flamingo,” whose terminals were Jacksonville-Cincinnati. For this reason the Memorandum of Understanding did not identify the “Flamingo” as the second section of trains 18-17. If Line 7204 had been carried on the “Dixie Limited” or the first section of

trains 18-17, whose terminals were Jacksonville-Chicago, the parties would have had no basis whatsoever for freezing the line because of the multiple lines carried thereon. Rule 64 (a) would have required the assignment of a conductor.

It is regrettable that the majority did not consider the facts of the dispute under consideration, but adopted an Award that plainly sets aside facts in favor of a partisan ruling.

For these reasons, among others, we dissent.

/s/ R. E. Black

/s/ W. F. Euker

/s/ R. A. DeRossett

/s/ O. B. Sayers

/s/ G. L. Naylor

LABOR MEMBERS' REPLY

TO

CARRIER MEMBERS' DISSENT

TO

AWARD 10745, DOCKET NO. PC-11205

Award 10745 is a correct interpretation of a "frozen run" case, as have been Awards 10140, 10578, 10616, 10617, 10733 and 10734, all on the same subject and all sustained in favor of the employees.

The dissent is a reiteration of one of the arguments already rejected and appears to be a perfunctory appeal for condolence.

No effect should be given this dissent.

/s/ R. H. Hack

R. H. Hack, Labor Member