

Award No. 11057
Docket No. PC-12623

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, 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 Conductors J. D. Scott and J. H. Hapeman, or their successors, of the Omaha District, that The Pullman Company violated the Memorandum of Understanding Regarding Conductor and Optional Assignments, found on pages 83 and 84, current Agreement. Also, Rules 25 and 64, when:

1. On October 29, 1960, conductors of the Omaha District were removed from the conductor run on CB&Q Trains 43 and 42 between Lincoln and Alliance, Nebraska.

2. Because of this violation, the Organization now asks that Conductors J. D. Scott and J. H. Hapeman, who were regularly assigned to this run, be credited and paid in accordance with the Memorandum of Understanding Concerning Compensation for Wage Loss for each trip beginning October 29, 1960 and subsequent dates that they are denied the right to operate in the conductor run on CB&Q Trains 43 and 42 between Lincoln and Alliance.

3. The Organization further requests that the extra conductors of the Omaha District (record to be checked to determine which conductors) who are entitled to perform the relief work in the conductor operation on the above-mentioned trains subsequent to October 29, 1960 be credited and paid for each trip that they are denied the right to fill the relief in the above run.

Rules 33 and 31 are also involved.

EMPLOYEES' 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

Further, the claim in this dispute is faulty in that it does not confine the case to Claimants Scott and Hapeman, who are identified, but attempts to make unidentified conductors eligible for an adjustment in the event the Organization secures a sustaining award.

CONCLUSION

The Pullman Company has shown in this ex parte submission on October 29, 1960, it exercised its right under Rule 64 (b) to discontinue operation of conductors on the single car operation between Lincoln and Alliance on CB&Q 42-43. The Company has shown that the operation discontinued on October 29, 1960, 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: This is a dispute between the Order of Railroad Conductors and Brakemen and The Pullman Company.

On October 29, 1960, conductors of the Omaha District were removed from the conductors run on C B & Q Trains #43 and 42 between Lincoln and Alliance, Nebraska. The Organization contends that this was a "frozen run"; that the removal of the conductors from the run was a violation of the Agreement.

The present dispute is squarely in point with Award #10578. As a matter of fact, it concerns the same parties and the same line, and practically the same route. We have searched the record carefully and can find no distinguishing factor between this dispute and the one involved therein. We believe that the question of measure and damages was involved and that the Claimants may only be entitled to the difference in what they have earned and what they would have earned had they continued to operate on trains #43 and 42, between Lincoln and Alliance, Nebraska.

For the foregoing reasons we find that the Agreement was violated.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1963.

**LABOR MEMBER'S DISSENT TO INCLUSION OF CERTAIN LANGUAGE
IN OPINION OF AWARD 11057, DOCKET PC-12623**

The deletion of certain language was requested at adoption session and had previously been requested in letter of January 4, 1963, as follows:

"January 4, 1963

"MEMORANDUM TO: Referee Moore

"This is to call to your attention a contradictory phrase in your proposed Award in Docket PC-12623.

"It will be noted that Part 2 of the claim states:

'Because of this violation, the Organization now asks that Conductors J. D. Scott and J. H. Hapeman, who were regularly assigned to this run, be credited and paid in accordance with the Memorandum of Understanding Concerning Compensation for Wage Loss for each trip beginning October 29, 1960 and subsequent dates that they are denied the right to operate in the conductor run on CB&Q Trains 43 and 42 between Lincoln and Alliance.'

"The Memorandum of Understanding Concerning Compensation for Wage Loss (Page 99 of Collective Agreement) provides the manner of payment in case claim is sustained.

"This Board may not change or amend the collective agreement but only interpret it.

"The statement appearing on Page 2 of proposed Award, as follows:

'We believe that the question of measure of damages was involved and that the Claimants may only be entitled to the difference in what they have earned and what they would have earned had they continued to operate on trains #43 and 42, between Lincoln and Alliance, Nebraska.'

"is, in addition to being contradictory to the provisions of the Memorandum of Understanding Concerning Compensation for Wage

Loss, also in conflict with the holdings in Award 10578 upon which your decision is based. And is likewise contradictory to the findings in Awards 10140, 10616, 10617, 10733, 10734 and 10745.

"In order to make this Award proper, it is therefore requested that the contradictory phrase previously mentioned be deleted.

"This is to further call your attention to the fact that the issue which you inserted by this language was not an issue in this dispute, either on the property or during panel hearings and is therefore dicta and improperly injected by you into this dispute.

"R. H. Hack

"cc/REBlack"

Request for deletion of this language not having been granted, dissent to its inclusion in the Award is appropriate.

/s/ R. H. Hack
R. H. Hack
Labor Member