

Award No. 11293
Docket No. PC-13138

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE PULLMAN COMPANY

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

STATEMENT OF CLAIM: . . . claim for and in behalf of Conductors J. H. Lattier and G. A. Hoyer on their successors of the Shreveport Agency, in which we contend that The Pullman Company violated the Memorandum of Understanding regarding conductor and optional assignments found on Pages 83-84 of the current Agreement, as well as Rules 25 and 64, when:

1. Under date of March 1, 1961 Conductors of the Shreveport Agency were removed from the conductor run on KCS trains 16 and 1 between Shreveport, La. and Texarkana, Ark.

2. Because of this violation the Organization now asks that Conductor J. H. Lattier, who was 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 March 1, 1961 and subsequent dates that he is denied the right to operate in the conductor run on KCS trains 16 and 1 between Shreveport and Texarkana.

3. The Organization further requests that extra Conductor G. A. Hoyer, Shreveport Agency, who is entitled to perform the relief work in the conductor operation on the above mentioned trains subsequent to March 1, 1961, be credited and paid for each trip that he is denied the right to fill the relief in the above run.

Rules 33 and 31 are also involved.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, with an effective date of September 21, 1957, and by this reference is made a part of this statement the same as though fully incorporated herein.

This claim involves a dispute over a conductor operation which, 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 Railway Conductors and Brakemen, Pullman System and The Pullman Company.

On March 1, 1961, conductors of the Shreveport Agency were removed from conductor run on K.C.S. Trains 1 and 16 between Shreveport and Texarkana, Arkansas.

This is a dispute now generally recognized as a "frozen" run case. This dispute is in point with Awards 10578 and 11057. Award 10578 held that the Agreement was violated and that the Claimants were entitled to the wage loss for each trip that they were denied the right to operate on the runs. Award 11057 followed 10578 although by dictum expressed that the question of measure of damages might be involved.

We believe that the conductors are entitled to the sum which they would have earned if the contract had not been breached less the amount they actually earned. We cite United Protective Workers vs. Ford Motor Company, 223 Fed 49 (Seventh Circuit), wherein it was held: "The fundamental basis for an award for damages for a breach of contract is just compensation for those losses which necessarily flow from the breach. Compensation for breach of contract should place an injured party in the position such party would have been in had the contract been fully performed."

We will not disturb the precedent established by Award 10578.

For the foregoing reasons, we believe 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 3rd day of April, 1963.

**LABOR MEMBER'S DISSENT TO AWARD 11293
DOCKET PC-13138**

This Award is the ninth rendered on the issue of "frozen runs".

All of these Awards; 10140, 10578, 10616, 10617, 10733, 10734, 10745, 11057 and 11293 correctly sustain the position of the Employes and all but 11057 and 11293 correctly indicate the measure of compensation, as claimed, and as provided for in the Memorandum of Understanding Concerning Wage Loss.

Award 11293, as did Award 11057, however, contains "dicta" by the Referee attempting to afford a measure of relief to the Carrier which is not consistent with the provisions of the Agreement itself.

Award 11293 incorrectly attempts to bolster this improper and unwarranted dicta by citation of certain legal authority, not pertinent to this claim.

For the same reasons expressed in Labor Member's Dissent to Inclusion of Certain Language in Opinion of Award 11057, Docket PC-12623, dissent to certain language in Award 11293 is likewise registered.

The deletion of this language was requested by this Member at Adoption Session and was summarily denied.

Once again, by inclusion of the language as follows:

"We believe that the conductors are entitled to the sum which they would have earned if the contract had not been breached less the amount they actually earned. We cite United Protective Workers vs. Ford Motor Company, 223 Fed 49 (Seventh Circuit), wherein it was held: 'The fundamental basis for an award for damages for a breach of contract is just compensation for those losses which necessarily flow from the breach. Compensation for Breach of contract should place an injured party in the position such party would have been in had the contract been fully performed.'"

this Board is exceeding its authority in changing or amending the collective agreement rather than interpreting it.

/s/ **R. H. Hack**

R. H. Hack