

Award No. 11561

Docket No. PC-13662

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 B. Isaacks, R. H. Lytle, W. J. Voelsch, or their successors, El Paso Agency, 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, and also Letter of Agreement of June 9, 1954, confirmed by Memorandum of June 17, 1954, when:

1. Under date of March 3, 1962, conductors of the El Paso Agency were removed from the conductor run on T&P trains 8 and 7 between El Paso and Sweetwater, Texas.

2. Because of this violation the Organization now asks that Conductors B. Isaacks, R. H. Lytle and W. J. Voelsch, who were regularly assigned to this run, and/or their successors, be credited and paid in accordance with the Memorandum of Understanding Concerning Compensation for Wage Loss for each trip, beginning March 3, 1962 and subsequent dates, that they are denied the right to operate in the conductor run on T&P trains 8 and 7 between El Paso and Sweetwater.

Rules 33, 31 and 68 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 Organization contends has been in continuous operation for many years, is formally authorized by the current Memorandum of Understanding Regarding Conductor and Optional Assignments, which, in turn, has been officially recognized by the Company up to the time of the origin of this dispute.

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 essential facts are not in dispute. Neither do the parties disagree on the basic issue before this Board. The question is whether or not Carrier had the right to discontinue conductors on T&P trains 8 and 7 between El Paso and Sweetwater, Texas.

Rule 64 (b) of the applicable Agreement reads as follows:

"(b) Management shall have the option of operating conductors, porters in charge, or attendants in charge, interchangeably, from time to time, on all trains carrying one Pullman car, either sleeping or parlor, in service; except with respect to certain conductor operations as specifically covered in the Memorandum of Understanding Regarding Conductor and Optional Assignments re-executed at Chicago, Illinois, September 21, 1957."

The Memorandum of Understanding Regarding Conductor and Optional Assignment first executed on August 8, 1945, and re-executed by the parties on September 21, 1957, reads as follows:

"In the application of Rule 64, entitled "Conductor and Optional Operations," as contained in the Agreement, effective September 21, 1957, it is understood and agreed by and between The Pullman Company and its conductors, represented by the Order of Railway Conductors and Brakemen, that the one Pullman car runs listed in Appendix A, attached hereto and made a part hereof, 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.

It is further understood and agreed that any round-trip run consisting of only one car which was operated by conductors as of April 23, 1945, if inadvertently omitted from Appendix A, shall be listed thereon and shall be considered included in this Memorandum of Understanding.

It is further understood and agreed that all runs listed in Appendix B, attached hereto and made a part hereof, shall likewise 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.

It is further understood and agreed that any run listed in either Appendix A or B shall continue to be operated by conductors between the new terminals if the line is shortened. If any run so listed is lengthened it shall continue as a conductor operation at least between the terminals to which conductors operated at the time the run was lengthened.

Any one Pullman car run of a seasonal character which was operated by conductors during 1944 shall be operated by conductors when seasonally resumed.

Re-executed at Chicago, Illinois this 21st day of September, 1957."

Appendix B, in part, reads:

"Appendix B

"Runs in Which Conductors Operate in Charge of but One Car
for a Portion of a Trip.

Line No.	Points Between Which Conductors Operate	Trains
3521	El Paso - Sweetwater	T & P 6, 7"

This Memorandum of Understanding, including Appendix B, establishes the fact that the run between El Paso and Sweetwater was frozen.

It is admitted that effective March 3, 1962 Conductors were removed from runs on T & P trains 8 and 7 between El Paso and Sweetwater, Texas. This, Petitioner contends, is in violation of the Agreement and of the Memorandum of Understanding.

Carrier contends that neither the Agreement nor the Memorandum of Understanding were violated and "that Rule 64 (b) supports the Company."

First, the Company says that at "the time this Memorandum became effective, with special reference to Appendix B, the car of Line 3521, El Paso-Sweetwater, T & P trains 6 and 7 operated in one direction only, eastbound, El Paso to Sweetwater on T & P train 6. Along with the car of Line 3521, El Paso conductors had in their charge on train 6, eastbound, the car of Line 3522, which they picked up at Toyah and handled to Sweetwater. Westbound, on T & P train 7, the El Paso conductor took charge at Sweetwater of the car of Line 3501, St. Louis-El Paso, which was not frozen, and the car of Line 3522, which was dropped from the train at Toyah. Effective June 2, 1946, frozen Line 3521 was discontinued, and thus the frozen line disappeared. "Since frozen Line 3521 has not existed since June 2, 1946 the Memorandum of Understanding was not violated."

If Line 3521 disappeared in 1946 why did the Carrier re-execute the Memorandum of Understanding on September 21, 1957 which includes Line 3521 and T & P trains 6 and 7? It is reasonable to believe that either the Carrier did not request its deletion or the Petitioner would not agree to the deletion. In either case the Memorandum was duly executed more than eleven years after Line 3521 allegedly disappeared. There is no reasonable basis for Carrier's contention.

Furthermore, although Line and Train numbers were changed on several occasions from 1945 to 1962, a Pullman car at all times continued to operate, in both directions, between El Paso and Sweetwater, Texas.

The record shows that on September 21, 1945 a conductor was in charge of one Pullman car from El Paso to Toyah, Texas. At Toyah another Pullman car was attached and the conductor handled both cars. Westbound, a conductor was in charge of two cars from Sweetwater to Toyah and one car from Toyah to Sweetwater. This is established in Petitioner's Exhibit 3 in the record which is a Company's "Operation of Conductors Form." The Exhibit also shows the following:

"Conductor allowed 15 minutes reporting time TP No. 7 and 15 minutes release time TP No. 6 Sweetwater.

Conductor returns Sweetwater to El Paso Line 3501 T&P No. 7."

In June, 1946, train No. 6 was changed to train No. 8. In 1948 trains Nos. 7 and 8 were discontinued and trains Nos. 5 and 6 operated between El Paso and Dallas. Again on February 20, 1949, trains Nos. 5 and 6 were discontinued and trains Nos. 7 and 8 between El Paso and Sweetwater were reinstated. There were further changes of trains No. 8 to No. 6 on August 22, 1950 and from No. 6 to No. 8 on June 21, 1953. Except for these train number changes and minor changes in departure and arrival time of the trains, the run between El Paso and Sweetwater continued until June 1954.

On June 13, 1954 the parties entered into the following Memorandum of Understanding:

"It is hereby understood and agreed by and between The Pullman Company and its conductors, represented by the Order of Railway Conductors, that the following reallocations shall be made under Rule 47. Reallocation of Runs.

The conductor run on Texas and Pacific train 7 and 8, designated as Line 3518, presently assigned to Dallas District conductors between Dallas and Sweetwater, and to El Paso Agency conductors between El Paso and Sweetwater, shall be operated with six (6) conductors on a through basis between Dallas and El Paso in lieu of splitting at Sweetwater, and shall be operated by three (3) Dallas District conductors and three (3) El Paso Agency conductors.

It is further understood and agreed that in the event this run is changed in any manner so that it will be impracticable to operate the Dallas conductors through to El Paso or the El Paso conductors through to Dallas, that the run will revert to its present status."

This latter run operated until March 1, 1962. Trains 7 and 8 continued to carry one Pullman Car in service between El Paso and Dallas. Porters-in-charge were assigned to handle the single Pullman cars.

The Company emphasizes the fact that Line 3521 was discontinued on June 2, 1946 and that Lines 3501, 3518 and 3527 were not listed in Appendix B of the 1945 Memorandum of Understanding. We have already shown that this Memorandum was re-executed on September 21, 1957 and includes in Appendix B Line 3521 and T & P trains Nos. 6 and 7. The record further shows that Line 3501 referred to train No. 7 which is included in the same Memorandum of Understanding. Furthermore, this Board has consistently recognized that Line numbers are used for accounting purposes—Award 10616 (Sheridan).

The terms "Runs," "Trains," and "Lines" are unilaterally designated by the Company for different purposes. In Award 10616 we defined each of them as follows:

"(1) Runs are assignments of conductors between certain points; (2) Lines is a term adopted by the Carrier for accounting purposes; and the designation of such can be adopted unilaterally by the Carrier; (3) Trains as defined by this claim are vehicles created by the Carrier for the conveyance of the public dependent upon their needs, and subject to public regulation."

Carrier may discontinue, lengthen or shorten runs. The run between El Paso and Sweetwater was never discontinued. It was lengthened and then shortened in the years between 1946 and 1962, but that does not relieve the Carrier from its obligations under the Memorandum of Understanding re-executed September 21, 1957. The frozen run remained in existence.

This Division has consistently held that a change in a line number does not "unfreeze a run." To hold otherwise would permit the Carrier to unilaterally terminate a valid agreement. This is contrary to every rule governing contracts. Awards 10140 (Daly), 10578 (LaBelle), 10616 (Sheridan), 10617 (Sheridan), 10733 (Ables), 10734 (Ables), and 10745 (Stark).

The change of train numbers, likewise, does not "unfreeze a run." There, too, the Carrier could change a train number and unilaterally terminate a valid contract. A valid agreement may be terminated or modified only by mutual agreement.

The runs on trains Nos. 6, 7 and 8 modified conditions of assignments between certain points. At no time did any of the changed runs eliminate a Pullman Car service between El Paso and Sweetwater. The Memorandum of Understanding of June 13, 1954 provided for conductor runs on trains Nos. 7 and 8. It also specifically stated that should that run be changed in any manner that the run will revert back to the status which existed on that day. That status was the frozen one Pullman car run as provided in the Memorandum of Understanding re-executed on September 21, 1957.

We have read and studied the Awards above cited and the dissents thereto. We can find nothing palpably wrong with the findings in the Awards. The facts in this case do not justify holding otherwise.

Second, Carrier argues that the claim is invalid "insofar as the unnamed Claimants are concerned." The claim is on behalf of Conductors B. Isaacks, R. H. Lytle and W. J. Voelisch, who were regularly assigned to the run between El Paso and Sweetwater "and/or their successors." The successors of the three Conductors can be readily ascertained from the Company's records. Where the identity of the Claimants can be readily ascertained that the claim is valid. It is the purpose and intent of the Railway Labor Act and the Rules of the National Railroad Adjustment Board to effectuate a conclusion of pending claims. It is not our responsibility to deny claims on procedural grounds unless there is a clear and unmistakable violation of the Act, the Rules of the Board or Rules of the Agreement. None of these are present here.

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 is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.

DISSENT TO AWARD NO. 11561,
DOCKET NO. PC-13662

The Majority herein quotes the 1945 Memorandum of Understanding Regarding Conductor and Optional Assignments, which was re-executed by the parties in 1957, and then quotes from Appendix B thereto the listing of the frozen run in which conductors operated in charge of but one car for a portion of the trip on Trains 6 and 7 between El Paso and Sweetwater, viz., the car of Line 3521, the operation of which car and Line was discontinued effective June 2, 1946, with the discontinuance of Train 6.

Award 11561 is based on the erroneous basic premise that the car of Line 3527, handled eastbound on Train 8, and the car of Line 3518, handled westbound on Train 7, now constitute the run which was frozen in 1945 for a portion of the trip between El Paso and Sweetwater, notwithstanding that Appendix B specifically defines the run, supra, as that on which conductors handled the car of Line 3521 on Trains 6 and 7. The Majority bases its conclusion in this respect, first, on the assumption that "There is no reasonable basis for the Carrier's contention" that the Memorandum of Understanding was not violated because it re-executed the Memorandum in 1957 without having deleted this run therefrom. This Board does not decide disputes on the basis of assumption, speculation or conjecture. Furthermore, in making its assumption in this respect, the Majority overlooked the provision therein "Should any such run be discontinued and subsequently restored it shall be a conductor operation." Under this latter provision, the frozen run which was discontinued in 1946 again would be a conductor operation only provided the car of Line 3521 was restored and again handled on Trains 6 and 7.

In addition, Award 11561 is based on the assumption that the parties performed a vain and useless act in listing Line and Train Numbers in Appendix B to identify the specific runs which were frozen. This Board cannot so construe the action of the parties, or consider those terms surplusage. Inasmuch as neither Train 8 nor Line 3527 or 3518 appeared in the Memorandum of Understanding, Award 11561 is in serious error in holding that the operation thereof was frozen which was discontinued effective March 1, 1962, for the additional reasons assigned in Carrier Members' Dissent to Award 10616, which Dissent is made a part hereof by reference. Furthermore, the Respondent Pullman Company has no jurisdiction over assigning train numbers to trains, which is a function vested exclusively in the railroads.

For the foregoing reasons, among others, we dissent.

W. H. Castle

P. C. Carter

D. S. Dugan

T. F. Strunck

G. C. White

**LABOR MEMBER'S REPLY TO
CARRIER MEMBERS' DISSENT TO AWARD 11561,
DOCKET PC-13662**

The 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, 10733, 10734, 10745, 11057 and 11293.

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.

Award 11561 is correct and the dissent in no way impairs its effectiveness.

H. C. Kohler,
Labor Member