Award No. 14016
Docket No. PC-15101

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, 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 J. A. Bryant, Los Angeles District, in which we contend that The Pullman Company violated the Agreement between the Company and its Conductors, with especial reference to Rules 25, 64 and 38 (Rules 7, 10 and 22 are also involved) when:

1. Under date of February 16, 1961, four sleeping cars, occupied by passengers and/or their possessions, namely, Salahkai (TSB1), Blue Bell (TSB2), Puye (TSB3) and Klethle (TSB4) were detached from AT&SF Train 124 at Williams Junction, Arizona, at 2:25 A. M., February 16, and laid over in Williams Junction, pending further movement, until 2:25 A. M., February 17, without the services of a conductor.

Because of this violation, we now ask that Conductor Bryant be credited and paid, under the terms of Rules 7 and 22, for a deadhead trip Los Angeles to Williams Junction and, under the provisions of Rules 10 and 22, for station duty in Williams Junction from 2:15 A. M., February 16, to 2:35 A. M., February 17, or 24:20 hours.

3. We further ask that upon completion of the station duty work Conductor Bryant be credited and paid for a deadhead trip from Williams Junction back to Los Angeles, under the terms of Rules 7 and 22.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the 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.

I.

The Travel Service Bureau Tour, American Agriculturist Party, occupied four (4) Pullman cars operating in Line Special, namely, Salahkai, Blue

nal, in which Award it was held that the detached cars did not constitute a train or part of a train within the meaning of Rule 64. It has been shown in this submission that the language of Rule 64 was not intended to change or abrogate, nor did it change or abrogate, the long established practice which is exemplified by this dispute. Finally, we have demonstrated that the claim in the instant dispute is for the creation of an unnecessary conductor assignment, in a situation where there is no conductor work to be performed and where no benefit for time spent on duty could accrue.

Since it has been shown that the claim is improperly before the Board and that no rule of the Agreement required the assignment of Conductor Bryant under the facts of the case, the claim is without merit, and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The present claim rests on the contention that it was a violation of the applicable Agreement to layover four sleeping cars at Williams Junction, Arizona, from 2:25 A. M., February 16, 1961, to 2:25 A. M., February 17, 1961, without the services of a Conductor.

The four cars were occupied by a special party en route from Barstow, California, to Chicago, and were detached from regular Train 124 at Williams Junction and placed on a side track to permit their passengers to take a sightseeing bus excursion to the Grand Canyon. After their 24-hour layover, the cars were re-attached to Train 124 and the trip to Chicago was resumed.

Rule 64(e), mentioned by Carrier, applies to the release of conductors after their cars arrive at a terminal, and is not applicable to the present situation. The controlling provision of the Agreement is Rule 64(a), which reads as follows:

> "Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, in service, except as provided in paragraph (c) of this Rule."

It is undisputed, and we find, that the exception mentioned in Rule 64(a) is not relevant to the issues of the instant dispute.

In interpreting Rule 64(a), the critical question is whether or not the four cars were "in service" and part of "a train" during their 24-hour layover at Williams Junction. In our judgment, that issue must be resolved in the affirmative. The four cars were, at all times material, earmarked, paid for, and reserved for the special party in question. They could be used only for that party, and for no other purpose. During the 24-hour layover, the cars were occupied by the party's possessions and during substantial portions of that time, by the passengers themselves. That no porter was on duty and the cars were locked during a large part of the layover period is not pertinent. Under the circumstances of this case, we are satisfied that the four cars were "in service" and "a train" within the meaning of Rule 64(a) during their 24-hour layover at Williams Junction. See Awards 12592 and other awards therein cited which are in line with our holding and concern somewhat similar situations.

Our conclusion is consistent with the testimony of Carrier's Assistant Vice President Boeckelman before Emergency Board 139. In that testimony, Mr. Boeckelman confirmed that the meaning of the Rule is that a conductor must be assigned to two or more cars that are parked at some point during

a trip at the request of passengers travelling in a special group. The situation described by Mr. Boeckelman in his testimony is exactly that before us in the present case. He expressly and, in our opinion, correctly distinguished Award 4814, now relied on by Carrier, on the ground that it concerned cars that were dropped at their destination and not parked temporarily for the convenience of a special party of passengers before they continued to go through to another destination.

It is also emphasized by Carrier that the claim must be dismissed in any event since the record betrays an unreasonably long delay on Petitioner's part in submitting the case to this Board. It appears that Petitioner did not appeal the case to the Board until just about three years after it had last been processed on the property. Although neither the Agreement nor the Railway Labor Act contains a specific time limit that bears upon the immediate question, a stated purpose of the Act is "to provide for the prompt and orderly settlement of all disputes." In view of Petitioner's delay in prosecuting its appeal here, we would be disposed to dismiss the claim if there were evidence that Carrier was prejudiced unduly by the delay.

In considering Carrier's procedural objection, it is noted that the present claim is not a continuing claim (in that regard, cf. such Awards as 10054, 10020, 9788, 8209, 7074, and others cited by Carrier). It is a claim for four days' compensation crystallized back in February, 1961, and has not been increased by reason of any procedural delays. It further appears that the claim sustained in Award 12592 involves the same Agreement and parties and a substantially similar situation as are now before us and was pending before this Board during a substantial part (about 8½ months) of the three year delay period. Shortly after that award was issued, the present claim was progressed to the Board. Petitioner's desire to avoid a multiplicity of similar claims before the Board is understandable, and there were, accordingly, extenuating circumstances for the delay. See Awards 12128 and 6921. In the Awards emphasized by Carrier, where claims were dismissed because of tardy appeals to the Board, all these circumstances were not present.

In the light of the foregoing considerations, the claim will be sustained.

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 Employes involved in this dispute are respectively Carrier and Employes 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 10th day of December 1965.