Award Number 379
Docket Number PC-424

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS
THE PULLMAN COMPANY

DISPUTE.—

"Conductor W. E. Croom claims he has been deprived of work and wages rightfully due him as the result of giving Conductor J. H. Bailey superior seniority rights to which he was not entitled. He asks to be restored to his correct position on the roster and pay for all time lost since June 1, 1935, the date on which J. H. Bailey returned to work in Richmond as Conductor."

STATEMENT OF FACTS.—Conductor W. E. Croom is shown on the roster of the Richmond District with a seniority date of July 30, 1920. Conductor J. H. Bailey is shown on the same roster with a seniority date of February 2, 1903. J. H. Bailey's service record is as follows:

Entered service of The Pullman Company as Conductor Feb. 2nd, 1903.
Continued as Conductor Feb. 2, 1903 to Jan. 20, 1907.
Storekeeper, Richmond, Jan. 20, 1907 to May 3, 1909.
Clerk, Richmond, May 3, 1909 to March 1, 1910.
Receiving Cashier, Richmond, Mar. 1, 1910 to June 7, 1916.
Conductor-Agent, Hot Springs, June 7, 1916, to Jan. 3, 1918.
Conductor, Jan. 3, 1918 to March 1, 1918.
Conductor-Agent, Hot Springs, Mar. 1, 1918 to May 31, 1935.
Conductor, May 31, 1935 to Oct. 1, 1935.
Conductor-Agent, Hot Springs, Oct. 1, 1935 to Dec. 16, 1935.
Conductor, Dec. 16, 1935 to Mar. 16, 1936.
Conductor-Agent, Hot Springs, Mar. 16, 1936 to June 27, 1936.
Conductor, June 27, 1936 to Aug. 16, 1936.
Conductor-Agent, Hot Springs, Aug. 16, 1936 to date.

POSITION OF EMPLOYEES.—

"From January 20, 1907, the date on which J. H. Bailey was first promoted, until June 1, 1935, he was not a conductor and therefore could not accumulate seniority as conductor. This is positively prohibited by Rule 7 (e), Exhibit 'B.' Bailey received a regular monthly rate of pay higher than that of a conductor and was given other prerequisites not enjoyed by conductors such as vacations with pay and a five-day week. While in his promoted position he was ordered to perform some conductors' work at Hot Springs but as Croom is stationed in Richmond he has not included that work in his grievance. However, such work was in violation of the Agreement as interpreted by the National Railroad Adjustment Board, Third Division, in Award No. 1, Docket No. PC-5. Bailey could not occupy two positions at the same time as the above Award shows.

"Croom was removed from his regular assignment on June 11, 1935, as the result of the return of Bailey to service as conductor in Richmond with seniority to which he was not entitled. Croom claims pay for all time lost on this account and also asks that the seniority roster be changed to show deduction from seniority of J. H. Bailey for all time spent in promoted positions."

POSITION OF CARRIER.—

"While it it true Rule 7 (e) of the rules governing working conditions for Pullman conductors in effect from January 1, 1922, to February 15, 1936, stipulates that—'A conductor promoted but later returned to service as a

conductor shall have credit on the seniority roster for all continuous time served as a conductor that had accrued at the time of his promotion'—the rule does not apply to conductor Bailey because of the fact that he was regularly performing conductor's work during the entire periods of his assignment as conductor-agent at Hot Springs, Va. * * *

"Mr. Bailey's position on the Richmond District conductors' seniority roster was never protested until Mr. Croom filed a protest on February 11, 1936, against the position conductor Bailey was shown to occupy on the 1936 roster. * * *."

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The record shows that Mr. Bailey first entered the service as a conductor February 2, 1903, and worked as such continuously from June 7, 1916, to date. While there is evidence that, prior to June 7, 1916, Bailey was for some considerable time occupied in other capacities, this was prior to the date of the first agreement between the parties and it was not the practice of the carrier to make deductions from seniority standing for time spent in such other capacities.

Therefore, when an agreement was made in 1922 and a seniority roster issued, Bailey was shown thereon with a seniority date of February 2, 1903, without protest. That date was also carried in the rosters of 1924 to 1935, inclusive, without protest; this claim, made February 11, 1936, being the first protest of record.

From the evidence, it is clear that it was not the intent of the parties to make the seniority provisions of the agreement retroactive, or to change senioriy dates established by custom and practice, prior to the effective date of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1937.