# NATIONAL RAILROAD ADJUSTMENT BOARD
## Third Division

Arthur M. Millard, Referee

**PARTIES TO DISPUTE:**

**ORDER OF SLEEPING CAR CONDUCTORS**
**THE PULLMAN COMPANY**

STATEMENT OF CLAIM.—

"Conductors A. McCluskey, F. E. White, E. F. Mercier, and Wm. H. Cumbey, St. Paul District, claim that the seniority roster posted in the St. Paul District in January 1935 is in error by giving former Soo Line conductors S. F. Johnson, R. B. Smith, and J. H. Stetson seniority dating from their employment with that railroad instead of from the date of their employment with The Pullman Company. They ask adjustment under Rule 10 of the agreement between The Pullman Company and its conductors which provides that they will be returned to the position for which they are contending and paid for any wage loss suffered by them (Exhibit 'A')."

STATEMENT OF FACTS.—In their ex parte submission the employes stated the facts, as follows:

"This grievance originated on January 23, 1935, and has been progressed in the usual manner under the provisions of Rule 10 (Exhibit 'A').

"The three Soo Line conductors named in the above statement of claim were taken into Pullman service on January 1, 1928, at the time the Soo Line Sleeping Car Service was absorbed by The Pullman Company. They were given seniority in Pullman service from the date of their employment with the Soo Line instead of the date of their employment with The Pullman Company. They were also given exclusive rights over the Soo Line runs absorbed by The Pullman Company. Under this arrangement they could use their Soo Line seniority to displace Pullman conductors, but Pullman conductors could not use their seniority to displace Soo Line conductors. Rule 7 (a) and (b) (Exhibit 'B') prohibits continuous seniority when conductors are permanently transferred from one district to another. It also starts the seniority of a conductor with the date of his employment with The Pullman Company and confines it to the district where he is employed. The date of employment of the Soo Line conductors is January 1, 1928, but they have been given seniority for all time served with the Soo Line prior to that date, which was in another district and under another company. In this way they have been given seniority rights superior to that of the conductors presenting this grievance.

"RULE 7

"(a) The seniority of a conductor, which is understood in this agreement to mean his years of continuous service from the date of last time employed, shall be confined to the district where he is employed.

"(b) Where conductors are permanently transferred from one district to another, their seniority in the district to which transferred will begin with the date of transfer, and they will lose all seniority in the district from which transferred."

three Soo Line conductors were, by agreement with the railway, allowed Pullman seniority credit from the date of last employment in Soo Line Railway service. They were to be continued in the St. Paul-Winnipeg service on the Soo Line, with permission to bid on new runs and vacancies on other Pullman Lines in the St. Paul District, which arrangement is evidenced by correspondence between officials of the railway and The Pullman Company and between officials of The Pullman Company.

Annual seniority rosters of The Pullman Company, St. Paul District, conductors, 1928 to 1936, both inclusive, show the seniority credit of Johnson, Smith, and Stetson and their credits appeared on these rosters without protest until January 23, 1935.

There is no existing rule or agreement between The Pullman Company and its conductors prior to or since January 1, 1928, which prohibits the action complained of, until the agreement of December 1, 1936. Absorption by The Pullman Company of railway operated sleeping and parlor car service was not covered by any rule and the action in the instant case was in conformity with the practice applied to employes acquired from the G. N., C. M. St. P. & P., N. Y. N. H. & H. and C. of Ga.

Effective December 1, 1936, the parties to the instant case entered into an agreement, which contains a rule stipulating the rights of railway conductors acquired by The Pullman Company with sleeping and parlor car service taken over from the railways. This rule is not retroactive.

On May 1, 1925, the carrier acquired the sleeping car service of the C. of Ga. and granted railway employes taken into Pullman service the same seniority rights as accorded the Soo Line employes covered by the instant case. The employes protested the action and took the grievance to the U. S. Railway Labor Board, who, by decision 4159, dated May 5, 1926, sustained the position of the carrier.

Effective January 1, 1933, the Soo Line resumed operation of sleeping cars between St. Paul and Winnipeg, but conductors Johnson, Smith, and Stetson remained in Pullman service.

Effective January 15, 1935, The Pullman Company again took over the Soo Line St. Paul-Winnipeg service and placed conductors in charge from St. Paul to Detroit Lakes and porters-in-charge between Detroit Lakes and Winnipeg. These changes had no bearing on the seniority credit of the three conductors.

Rule 7 (a) fixes a Pullman Company conductor's seniority date and has no application to employes of railway sleeping car lines acquired by or merged with Pullman Company operations and the action of the carrier in the instant case was affirmed by Labor Board Decision 4159 dated May 5, 1926.

Rule 7 (b) concerns permanent transfers from one Pullman district to another and is not applicable to railway employes acquired by or merged with Pullman Company employes.

At the time of this occurrence there was no existing rule or agreement between The Pullman Company and its conductors which prohibited the action complained of, therefore, rule 11 is not applicable.

OPINION OF BOARD.—In the question at issue in this dispute, various rules and decisions have been submitted as Exhibits with the aim of establishing precedents either for or against the submissions involved; but which apply naturally to the disputes and conditions involved at the time they occurred but only remotely to the instant case. In this dispute the claim is made that the seniority roster posted by The Pullman Company in the St. Paul District in January 1935, showing the seniority rating of its conductors, was in error by giving certain conductors, brought into The Pullman Company from a service absorbed from another company, seniority ratings from the time of their previous employment, rather than from the date of their employment with The Pullman Company. The claimants ask adjustment of their grievance by being "returned to the position for which they are contending" and being paid "for any wage loss suffered by them"; and quote Rule 10 of the agreement between The Pullman Company and its conductors as a basis for their contention. Together with Rule 10, Rule 7, paragraphs (a) and (b), and Rule 11 of the agreement between The Pullman Company and its conductors have been quoted by both the employes and the carrier as supporting their respective contentions. Each of the parties represented in this dispute are in accord as to the application of Rule 10, covering the manner in which grievances are to be made and handled and the terms of this rule are not at issue. In the application of Rule

7 covering, in paragraph (a), the basis on which seniority is determined and its limitation to the district in which the conductor is employed, and, in paragraph (b), the loss of seniority in a district from which a conductor is transferred, and the beginning of seniority in a new district, or the district to which a conductor's transfer has been made, the Board submits that, in the absorption of the Soo Line service into the St. Paul District of The Pullman Company and the conditions incident thereto, inclusive of the seniority rights of conductors, there has been no invasion of the seniority or other rights of the conductors of The Pullman Company presenting this grievance by the granting of seniority rights to the conductors absorbed into the St. Paul District from the Soo Line under the application of paragraphs (a) and (b) of Rule 7.

Rule 7, paragraphs (a) and (b), are explicit in their meaning and clearly evidence that they are not intended to apply against conductors who are absorbed from one line into another, but (paragraph (a)) is to establish the basis of seniority and its limitations and (paragraph (b)) to establish the seniority of a conductor where a direct transfer is made by a conductor, or with his knowledge and consent, from one established district into another, either to secure a change of location, a betterment of employment, or for other conditions incident to or necessary for the welfare of the individual or the continuation or improvement of his employment. In the application of these rules and their interpretation to this instant claim, there were no transfers of conductors made from one district to another, but an absorption of one line into another in which none of the rules of seniority or transfer contained in the agreement between the conductors and the carrier were affected. Under these conditions, as no change was made or is evidenced of any desire or intent to change any of the existing rules, there has been and is no violation of Rule 11 in the transactions on which this claim is based.

In addition to the written rules contained in the agreement between the carrier and the employes which have been presented in this case, and which in their proper interpretation have not been violated, the employes have referred to the violation of the unwritten principles of fairness and equity. There is no doubt in the opinion of the Board that when these principles of fairness and equity are considered in the light of the interpretation of the written rules, the employes will agree that there has been no violation of these principles, in that by their application the employes who were merged or absorbed by one line into another were entitled to the seniority they had earned or established in the line or service in which they had originated. Further, that such absorption or merger was not by the will or volition of the Conductors merged, but was a consolidation of interests in which the agreements between the Carrier and the Conductors were not affected. Further, no preference was shown the merged Conductors, in that while they were permitted to retain the runs to which they were accustomed in the service which had been merged, and were given such seniority rights as they had earned so far as they applied to bid on new runs and vacancies in the same manner as the Conductors on the line into which they had been merged, they were not allowed to use their seniority in displacing other regularly assigned conductors of the line into which they had been merged and to which their seniority might otherwise have entitled them.

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 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 there has been no violation of the rules of the agreement between the Employes and the Carrier.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
*Secretary*

Dated at Chicago, Illinois, this 26th day of April, 1937.