

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. Belgard, E. W. Grace, R. M. Schnell, C. P. McBride, M. D. Flaherty and H. D. Wells, St. Paul District, claim that Rule 7 (a) and (b), agreement between The Pullman Company and its conductors (Exhibit 'A') has been violated by giving certain former Great Northern Sleeping Car Conductors, including J. E. Collins, seniority rights from the date of their employment with the Great Northern Railroad instead of the date of their employment with The Pullman Company. They ask that the seniority roster be corrected to show the seniority of the Great Northern Conductors beginning with the date on which they were employed by The Pullman Company and that they be paid for wage losses suffered by them, as provided in Rule 10 (Exhibit 'B')."

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

"This grievance originated on August 5, 1935, and has been progressed in the usual manner under the provisions of Rule 10 (Exhibit 'B').

"The complaint is the result of giving the Great Northern Conductors continuous seniority in the St. Paul District of The Pullman Company from the date of their employment with the Great Northern Railroad instead of from the date of their employment with The Pullman Company as provided in Rule 7 (a) and (b), (Exhibit 'A'). This gave them greater seniority than that allowed the conductors presenting this case."

"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."

The carrier stated the facts as follows:

Effective May 1, 1924, by agreement, it took over Great Northern Railway sleeping car service between St. Paul and Winnipeg on trains 7 and 8; and St. Paul and Duluth on trains 17 and 18; and also took over the following Great Northern employees running on those lines:

3 Great Northern Conductors,
16 " " Porters,

who, by agreement between The Pullman Company and the Great Northern Railway, were given seniority in The Pullman Company's St. Paul District from date of their last employment in Great Northern service. They were to continue service on the Great Northern lines, with permission to bid on new positions and vacancies on other St. Paul District lines, but were not to be dis-

certain rights to bid on new runs and vacancies which was in accord with handling of railway conductors' seniority on lines and employes acquired by The Pullman Co. from the C. M. St. P. & P., N. Y. N. H. & H. and Central of Georgia.

The acquisition of the additional G. N. service provided new territory and a larger field for Pullman conductors in the St. Paul district and subsequently they were benefited instead of damaged.

On May 1, 1925, the carrier acquired the sleeping car service of the Central of Georgia and granted railway employes taken into Pullman service the same seniority rights as accorded the G. N. 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 December 1, 1936, the parties to the instant case entered into an agreement which contains a rule stipulating the rights of railroad conductors acquired by The Pullman Co. with sleeping and parlor car service taken over from the railroads. This rule is not retroactive.

Rule 7 (a) has no application to employes of railroad sleeping car lines acquired by or merged with Pullman Co. operations.

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 Co. employes.

Conductor J. E. Collins' name appeared on Pullman Co. St. Paul District rosters each year from 1925 to 1936, both inclusive, with seniority credit from October 14, 1913, and the first protest concerning his seniority credit was filed on August 5, 1935.

Rule 11 provides that should either party desire to change any of the rules, the party desiring to make such change should give written notice, etc. There is no existing rule or agreement between the Pullman Co. and its conductors prior to or since 1924, until the agreement of December 1, 1936, which prohibited the action complained of, therefore, it was not necessary to invoke the provisions of rule 11 when G. N. employes were taken over by The Pullman Co.

M. D. Flaherty and J. E. Collins were acquired from the G. N. under similar circumstances. Flaherty's seniority date in the St. Paul District is February 9, 1916, which includes his G. N. service. Mr. Flaherty, one of the complaining parties, enjoys a seniority credit on the Pullman roster of his date of entry into service of the G. N. Railroad, but he protests like consideration having been given J. E. Collins.

OPINION OF BOARD.—In the question at issue, the employees submit that the "counts" in this dispute are identical with those of Docket PC-428 and ask that argument presented in that case be made applicable to the instant case.

The claim is made in this dispute that Rule 7, paragraphs (a) and (b) of the agreement between The Pullman Company and its Conductors has been violated by the Carrier by giving certain sleeping car conductors, brought into The Pullman Co. from a service absorbed from the Great Northern Ry., seniority rights from the date of their employment with the Great Northern Ry. instead of the date of their employment with The Pullman Company. The claimants ask that the seniority roster be corrected to show the seniority of the conductors absorbed from the Great Northern Ry. as "beginning with the date on which they were employed by The Pullman Co. and that they be paid for wage losses suffered by them as provided in Rule 10" of the agreement.

In addition to Rule 7, paragraphs (a) and (b) of the agreement between the employees and the carrier, Rules 10 and 11 have been submitted by both parties to the claim in support of their respective differences; each of the parties represented in this dispute are in accord as to the application of Rule 10 and the terms of which are not at issue.

In the application of Rule 7, which covers (in paragraph (a)) the basis on which the seniority of a conductor is determined and its limitation to the district on which the conductor is employed and (in paragraph (b)), first, the loss of seniority in the district from which a conductor is transferred and, second, the beginning of seniority in a new district, or a district to which the conductors transfer has been made, the Board submits that, in the absorption of the Great Northern service into the St. Paul District of the Pullman Co. and the conditions incident thereto, the seniority or other rights of the con-

ductors of The Pullman Co. presenting this grievance have not been invaded by the granting of seniority rights to the conductors absorbed into the St. Paul District of The Pullman Co. from the Great Northern Ry. service under the application of paragraphs (a) and (b) of Rule 7 of the Agreement.

Rule 7, paragraphs (a) and (b), is explicit in its meaning and clearly evidences the fact that it is not intended to apply against conductors who are absorbed by one line into another, but (paragraph (a)) to establish the basis of seniority and its limitations and (paragraph (b)) to establish the seniority rights 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 conditions or for other causes 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 claim, there were no transfers made of conductors from one district to another but an arrangement was made whereby one line of service was absorbed or consolidated into another and 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 nor is there evidence of any desire of the carrier to change any of the existing rules, there has been and is no violation of Rule 11 in the transaction on which this claim is based.

In addition to the written rules contained in the agreement between the carrier and the employees which have been presented in this case and which in their proper interpretation have not been violated, the employees 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 employees will agree that there has been no violation of these principles in that, by their application, the employees who were consolidated 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 consolidation was not by the will or volition of the conductors merged but was a merger of interests in which the agreements between the carrier and the conductors were not affected. 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 merged and were given such seniority rights as they had earned in the same manner as the conductors of the lines into which they had been merged insofar as that applied to bidding on new runs and vacancies, they were not allowed to use their seniority in displacing other regularly assigned conductors of the line into which they had been absorbed 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 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 there has been no violation of the rules of the agreement between the employees and the carrier.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

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