

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductor L. G. Tate asks correction of an error in the 1937 seniority roster of conductors in showing Conductor H. W. Baker as No. 42 and Tate as No. 43. This error is due to failure to deduct 3 years, 2 months and 15 days from the seniority rating of Conductor Baker for time spent in a promoted position, as required by the rule then in effect. With this correction, Conductor Tate will precede Conductor Baker."

EMPLOYEES' STATEMENT OF FACTS: "This grievance has been presented in accordance with the Agreement between The Pullman Company and Conductors in the service of The Pullman Company, effective December 1, 1936. Decision of the highest Pullman officer designated for that purpose is shown in Exhibit 'A.' Rule 7 (e), in effect until February 15, 1936, Exhibit 'B,' provided that deduction would be made from the seniority rating of conductors for all time they occupied a promoted position. No such deduction was made on the 1937 roster in the case of Conductor Baker, who had been promoted to a position in the section sales department. It is admitted by the Management that Conductor Baker has been occupying a promoted position."

POSITION OF EMPLOYEES: "The offer of the Management to deduct one year, 6 months and 11 days from the seniority of Conductor Baker is not satisfactory. This offer is explained by the Management as being in accordance with the practice. The conductors are not aware of such a practice and do not subscribe to it because it is in violation of the rule, Exhibit 'B.' Furthermore, this offer is an attempt to satisfy Conductor Tate by making him a party to a violation of the rule at the expense of other conductors who would precede Baker when the rule is complied with. This is made clear in the letter from Mr. Vroman, July 6, 1937, Exhibit 'C.' Mr. Vroman further says that his decision in this case is in accord with the action taken in other comparable cases. The conductors are not aware of such comparable cases but if they exist it is evidence that the conductors affected have not protected their seniority rights and Conductor Tate is not willing to waive his rights under the rule on that account. The case of Conductor Nelson, to which Mr. Vroman refers, is not comparable as developed by the hearing before the Adjustment Board. Conductor Nelson was working at the Chicago World's Fair during the period in question and not in Pullman passenger service."

CARRIER'S STATEMENT OF FACTS: "Conductor L. G. Tate, Kansas City District, holds seniority in that district from June 22, 1914, (his employment date) less 7 months 25 days. In other words his seniority 'date' is February 17, 1915. In preparing seniority rosters for Pullman conductors it

greater importance, and later returned to his former class and rating, would not in the opinion of the Board apply in a situation where a conductor was placed in a temporary assignment to meet an emergent condition, even though such assignment would carry a temporary higher rating or increased pay. In the opinion of the Board the proper interpretation of Rule 7 (e) is to cover a position of advancement that is not primarily intended as temporary, and, therefore, emergent employment, but as an advancement in class and station and which later through economic, service or other conditions or requirements may be changed and necessitate the conductor's return to his former station through unexpected conditions beyond the control of either the carrier or the employee.'

This interpretation effectually nullifies the basis of the claim presented by Conductor Tate and his representative.

"On the evidence presented and the precedents cited, we maintain that Conductor Tate's claim is not supported by rule or practice, is without merit, and should be denied."

OPINION OF BOARD: The evidence shows that Mr. Baker's name was removed from the seniority roster June 25, 1937. While this was subsequent to the complaint in this case, it was before the matter reached this Board, and as the situation complained of no longer subsists the case is moot. It must, therefore, be dismissed without prejudice to the organization's right to renew the complaint at any time should Mr. Baker's name be restored to the seniority list on the basis complained of herein.

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 the evidence of record discloses the case is moot at present.

AWARD

Claim dismissed without prejudice to its renewal in conformity with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1938.