Award No. 909
Docket No. PC-854

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductor W. H. Smith and M. S. Strevell of Albany District, who were removed from their regular assignment on Line 1200-1553 and 5511, by putting porters in their places, effective August 28, 1938, ask immediate reinstatement to their assignment and pay for all time lost on account of removal therefrom."

EMPLOYES' STATEMENT OF FACTS: "This grievance has been progressed in the usual manner under the rules of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company. Decision of the highest officer designated for that purpose is shown in Exhibit 'A'.

"Prior to August 28, 1938, Lines 1200, 1553 and 5511 were operated by conductors, but on that date they were removed and porters were assigned to do their work. The reason given by the carrier for this change at the first hearing was that the expense of operating conductors was not warranted."

CARRIER'S STATEMENT OF FACTS: "The operation involved in this claim is confined to D. & H. R. R. Trains No. 7, and No. 8. It concerns sleeping car lines No. 1200, Albany-Montreal; No. 1553, New York-Plattsburg; and No. 5511, New York-Fort Edward. One sleeping car is operated in each of these lines in each direction.

"On August 27th, 1938, porters in charge were assigned on these lines as follows:

'**Line No. 1200,** from Albany to Montreal and return, 234 miles; hours in charge, 11:20 hours northbound, 12:15 hours southbound, with rest periods allowed.

'**Line No. 1553,** northbound from Albany to Plattsburg, 167 miles, southbound from Plattsburg to Troy, 160 miles; hours in charge, 7:30 hours northbound, 7:00 hours southbound, with rest periods allowed.

'**Line No. 5511,** southbound from Fort Edward to Troy, 49 miles; hours in charge, 6:00 hours, with rest period allowed. (This line has been operated continuously by porters in charge northbound from Albany to Fort Edward, 55 miles, since it was shortened to Fort Edward on April 28th, 1929. The porters were in charge 8:28 hours.)'

"These lines were manned as follows:

"(16) **Line No. 682,** between Kansas City and Los Angeles, assigned to porters in charge Ogden to Los Angeles, one way; 842 miles; hours in charge 20:45; one car so operated since 2-14-38, and additional car on the same train with similar operation since 6-12-38.

"(17) **Line No. 278,** between Louisville and Chicago; 325 miles; assigned to porters in charge, 10:30 hours outbound, 11:15 inbound; one car so operated since 8-11-31. Another car on the same train has been assigned to porters in charge since the same date between Orleans, Ind., and Chicago.

"(18) **Line No. 2108,** between Jersey City and St. Louis, assigned to porters in charge between Washington, D. C., and Cincinnati; 549 miles; hours in charge 15:33 outbound, 14:55 inbound; one car so operated since 5-22-33, except from 9-25-38 to 11-28-38 eastbound porter-in-charge operation was between Cincinnati to Grafton, W. Va. Other cars on the same train were assigned to porters in charge in 1936 and 1937 between different points.

"(19) **Line No. 785,** between Sausalito and Eureka, Calif.; 284 miles; assigned to porters in charge, 11:45 hours, outbound 13:20 inbound; one car so operated. Assigned to porters in charge 5-8-21 to 5-5-23; then to conductors until 4-9-32, when it was again made a porter-in-charge operation. Another car on the same train has been assigned to porters in charge during the same porter-in-charge periods.

"(20) **Line No. 96,** between Kansas City and Rochester, Minn.; 464 miles; assigned to porters in charge, 15:40 hours outbound, 14:10 inbound; one car so operated since 7-16-32.

"**Prior history:** A portion of this line was assigned to porters in charge 4-15-21, with variations in assignment to 7-16-32, when the entire distance was so assigned, as above shown. Since that date other cars in the same train have been operated with porters in charge between varying and different points.

"(21) **Line No. 3034,** between St. Louis and Rock Island; 263 miles; assigned to porters in charge, 10:00 hours outbound, 12:00 inbound; one car so operated since 2-17-35.

"**Prior history:** This line was assigned to porters in charge in 1912 between St. Louis and Savannah, Ill., 322 miles, and was continuously so operated until 2-17-35 when it was shortened to the present run as above shown.

"The foregoing examples are illustrative of the entire sleeping and parlor car service. Pullman cars are furnished to railroads on their demand, to meet the requirements of travel. As lines of cars are established, changed or discontinued according to varying railroad demands, the operating officers exercise their judgment and discretion in the assignment of employes necessary in furnishing proper sleeping and parlor car service to passengers in the cars. Lines where conductors are now employed, or have been employed in the past, show results of the practice hereinbefore set forth, under varying conditions similar to the above examples.

"The action of The Pullman Company involved in the present claim is embraced within the practice described. For the reasons stated herein, which show there has been no violation of any rules of the Agreement between The Pullman Company and its Conductors, the claim filed in this proceeding is without merit, and should be denied."

OPINION OF BOARD: Prior to August 28, 1938, Lines 1200, 1553, and 5511 were operated as indicated below by conductors. On that date the conductor positions between Albany, N. Y. and Montreal, Canada were abolished and porters-in-charge were assigned to do the work theretofore performed by the conductors.

Line 1200 consists of one Pullman car operated between Albany, N. Y. and Montreal, Canada. Line 1553 consists of one car operated between

New York City and Plattsburg, N. Y., via Albany northbound, and via Troy, N. Y. southbound, Line 5511 consists of one car operated between New York City and Fort Edward, N. Y., via Albany northbound, and via Troy southbound. Lines 1553 and 5511 were and still are in charge of conductors from New York City to Albany northbound, and from Troy to New York City southbound. The record indicates that the New York-Fort Edward Pullman (Line 5511) was operated by a porter-in-charge from Albany to Fort Edward prior to the abolition of the conductor positions. The claim involves the right of carrier to substitute porters-in-charge in place of conductors on these lines from Albany northbound and to Troy and Albany southbound, to and from their several termini.

The question involved in the dispute is the same in principle as that presented in the cases covered by Awards 779, 780, and 781. The management claims here, as it did in those cases, the right to make such changes whenever it considers the circumstances justify the change without consultation with the duly authorized representatives of the Brotherhood. Petitioner contends that the prevailing agreement between the parties, effective December 1, 1936, in effect froze all conductor runs then in existence and gave to conductors all new lines thereafter established. As the lines in question were in charge of conductors when the prevailing agreement was executed, Petitioner contends that porters-in-charge cannot be substituted for conductors on these lines except by agreement between the parties or after notice and conference, as provided in Rule 56 of the agreement.

The Board reaffirms, without repeating here, what is said in Awards 779, 780, and 781 as to these contentions of the parties. The management does not have the unlimited right to make such changes whenever it sees fit to do so. Any change from conductor to porter-in-charge operation must find support in the practice in effect when the agreement was executed. As the practice has been in effect for many years and porter-in-charge operation has always been the exception and not the rule, enough accumulated experience should be known to both parties to make the problem a simple one for them if they would get together and in good faith attempt to agree upon some yardstick for the determination of the conditions under which porter-in-charge operations are permissible. Such an undertaking would also greatly simplify the cases brought to this Board for adjudication.

The contention of Petitioner that, as the lines in question were in charge of conductors when the prevailing agreement was executed, the runs were frozen as conductor runs and porters-in-charge cannot be substituted except by agreement between the parties or after notice and conference as provided in Rule 56 of the agreement is untenable, for the reasons stated in the awards heretofore referred to. The many decisions of this Board holding that work cannot be removed from an agreement and given to employes not covered by the agreement (cited and relied upon by petitioner) are not applicable to the precise question presented by this dispute. They will govern should it be determined that the work in question belongs to conductors. The question before the Board, however, is whether the work belongs to the conductors or whether conditions had so changed as to authorize the substitution of porters-in-charge.

Petitioner contends that the record in this case contains sufficient evidence to sustain the claim even though the Board should not sustain its contention that the runs in question were frozen by the agreement of December 1, 1936. Award 779 is relied upon in support of this contention. Petitioner offered as evidence in support of the claim proof that the run in question had been a conductor run since its inception and that no change was made in the operation of the lines involved at the time porters-in-charge were substituted for conductors. In Award 779 the claim was sustained upon a similar showing. In that case the Board pointed out, however, that it had been cited to no "instance of any other runs of anything like the length or importance of this one manned by a porter-in-charge." The record in this case does contain such proof. Carrier cites twenty-one specific instances,

many of which appear equally as long and important as the run in question, in which changes from conductor to porter-in-charge operations have been made, some before and some since the effective date of the present agreement. This showing makes the conclusion reached in Award 779 not applicable in this case.

Commenting upon the showing that should be made in a dispute of this character the Board in Award 779 said:

> "We should be furnished among other things the following criteria; other instances of comparable lines on which substitutions have been made; the history of the contested as well as the compared lines; reasons for the changes; changes in traffic volume."

The record in this case falls far short of meeting this requirement. Recognizing that the record did not contain the character of evidence held in Award 779 to be essential to enable the Board to make final disposition of the claim should it reaffirm its holding in said award, Carrier sought authority to re-open the case and submit additional evidence before the Board and the Referee. As such procedure is not permissible under the Railway Labor Act after a Referee has been appointed, without withdrawing the case from the Referee, the Board refused to re-open same for the receipt of such additional evidence.

In Award 779 the Board also held that the burden is on the Carrier to justify the change by more than mere volition. That obligation has been met by Carrier only to a very limited extent in this case. The record does not contain sufficient evidence for the Board to make final disposition of the claim. While the decision in Award 779 was probably known to the parties before the record was closed in this case, the time between the date of that opinion and the closing of the record in this case was insufficient to permit the compilation of the data held in said award to be necessary for a final disposition of this case, and while neither party sought an extension of time to enable it to compile such data nevertheless the Board is of the opinion this case should be remanded to the parties for the development of the facts indicated by that opinion as necessary for a disposition of the claim, and such additional facts as the parties may consider pertinent to the issues involved. In case the parties are unable to adjust the dispute the same may be brought back to this Board with the additional information necessary to make final disposition of the claim.

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

The claim should be remanded to the parties for the development of facts indicated by Opinion.

AWARD

Claim remanded; in case the parties are unable to adjust dispute claim may be returned to the Board in conformity with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1939.