

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductors C. C. Howard, Riley Lee and A. E. Belt, Memphis District, who were removed from their regular assignment on Line 3370 and 3375, by putting porters in their places, effective February 4, 1939, claim this was in violation of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company as interpreted by the Third Division, National Railroad Adjustment Board, in Award No. 779, Docket PC-698, and 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 February 4, 1939, Lines 3370 and 3375 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."

"The conductors here referred to operated on Cotton Belt Trains Nos. 1 and 2 between Memphis and Dallas. They were due to leave Memphis on Train No. 1 at 10:35 P. M., arrive Dallas at 11:59 A. M., a distance of 481.7 miles. On the return trip, they were due to leave Dallas on Train No. 2 at 6:00 P. M., arrive Memphis at 7:00 A. M. The conductor, leaving Memphis, handled two Pullman cars, Lines 3370 and 3375. He handled the car in Line 3370 between Memphis and Dallas. The car in Line 3375 operated between Memphis and Shreveport and was handled by this conductor between Memphis and Lewisville, arriving 3:47 A. M., a distance of 259 miles. Return trip, conductor left Dallas with one car in Line 3370 and handled this car through to Memphis. Picked up car from Shreveport, Line 3375, at Lewisville, 12:05 A. M., and handled back to Memphis. Spread of the assignment, round trip, 30 hours, 15 minutes—less 8 hours deducted for rest en route—net service time credited, 22 hours, 15 minutes. Three conductors in the assignment. A diagram of the lines involved is shown in Exhibit 'D.'"

POSITION OF EMPLOYES: "This grievance is similar in principle to Docket No. PC-698, Award No. 779, and the arguments used in that case are applicable to this one. They differ only in minor details. The dispute is based on the substitution of porters for conductors, who are now performing conductors' work."

agreement the interpretation which this record shows has always been placed upon it by the conductors themselves, and in so doing to dismiss this complaint.

THE CONDUCTORS' ORGANIZATION IS NOW SEEKING TO DEPRIVE THE COMPANY OF ITS RIGHT TO MAINTAIN PORTER IN CHARGE OPERATIONS BY THE ENACTMENT OF FEDERAL LEGISLATION.

"The conductors' organization, by this proceeding, is requesting that the Board write into the contract now, by construction, the very amendments which, after full consideration and negotiation, were not written into the contract by the parties. Knowing, however, that the terms of the contract and the record of the organization's position in the negotiation of that contract are such that it cannot seek a final adjudication upon the construction of the contract, a third step has now been taken. The conductors are now seeking legislation in the Federal Congress (H. R. 9406, introduced April 16th, 1940; S. 3798, introduced April 17th, 1940), to accomplish by that legislation what was first sought by amendment to the working agreements, and latterly before this Board, by construction of the contract. This resort to legislation is the clearest evidence that the conductors know that the limitations which they desire to place upon the porter-in-charge practice are not to be found in the present contract.

"Never before, we believe, has any organization asked this Board for a ruling which the organization has itself made impossible by such a record as that presented here. We ask the Board to give the agreement the interpretation which the record in this case shows has been placed upon it by the conductors themselves.

"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: The principles involved in this claim in respect to the right of the Pullman Company to change from a conductor operated line to a porter-in-charge line are identical with the principles in Docket PC-854, Award 1461. That award is controlling in this case. We shall consider the record and the showing made in the light of the statement made in Award 779. We quote from that award:

"* * * 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."

Prior to February 5, 1939 lines 3370 and 3375 were operated by conductors, but on that date they were removed and porters were assigned to do their work. The conductors involved in this case operated on Cotton Belt trains Nos. 1 and 2 between Memphis and Dallas. They were due to leave Memphis on train No. 1 at 10:35 P. M. and arrive at Dallas the following day at 11:59 A. M., a distance of 481.7 miles; on the return trip they were due to leave Dallas on train No. 2 at 6:00 P. M. and arrive Memphis next morning at 7:00 A. M. The conductor leaving Memphis handled two pullman cars, lines 3370 and 3375. He handled the car in line 3370 between Memphis and Dallas. The car in line 3375 operated between Memphis and Shreveport and was handled by this conductor between Memphis and Lewisville; it arrives at Lewisville at 3:47 A. M., a distance of 259 miles. The return trip conductor left Dallas with one car in line 3370 and handled this car through to Memphis, picked up car from Shreveport, line 3375, at Lewisville, 12:05 A. M., and handled back to Memphis. The spread of the assignment, round trip, was 30'15"; 8 hours deducted for rest en route resulted in net service time of 22'15"; three conductors were in the assignment.

This record shows that this has always been a conductor operated line with the exception that porters have operated in charge of sleepers between Lewisville and Shreveport and return. The fact that this is a two car operation; that it has always been operated by conductors; that the record shows that the traffic is heavier now than it was in 1932 and 1933 is conclusive that carrier has failed to sustain the burden of showing the reasons that justify the change.

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 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 a violation of Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1941.