

Award No. 1847

Docket No. PC-1776

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John W. Yeager, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Conductor R. Q. Larrabee, Oklahoma City Agency, contends that he was entitled to displace Conductor M. D. Page, hired in the Fort Worth District about October 16, 1940, and asks payment of all time lost as result of failure to give this position to him when it was available.

EMPLOYES' STATEMENT OF FACTS: This case 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. The decision of the highest ranking officer designated for that purpose is shown in Exhibit "A". Rules 40 and 41 are involved and are shown in Exhibit "B". The facts in this case are best expressed in the letters passing between the parties and they are shown in Exhibit form as follows: Letter from Conductor Larrabee to Agent L. V. Wike, Oct. 10, 1939, shown in Exhibit "C". Letter from Larrabee to Mr. G. H. Gibney, Superintendent, Car Service Employees, Oct. 22, 1940, shown in Exhibit "D". Answer of Mr. Gibney to Mr. Larrabee, Oct. 24, 1940, shown in Exhibit "E". Letter from M. S. Warfield, representing Conductor Larrabee, to Agent L. V. Wike, November 7, 1940, Exhibit "F"—and Mr. Wike's reply, dated November 15, 1940, Exhibit "G".

All of the foregoing shows that when sufficient additional work came about in Fort Worth, the carrier hired a new conductor instead of giving the refusal of this job to Larrabee, as mentioned in the letter of Mr. Gibney, Exhibit "E". It shows further that Agent Wike, a subordinate to Mr. Gibney, ignored the promises made to Larrabee by Mr. Gibney which acknowledged Larrabee's right to transfer when work was available.

POSITION OF EMPLOYES: The facts in this case are so conclusive that it seems little is left for argument. The conductor, faced with the certainty of no work in his home terminal, made application for permanent transfer elsewhere. He was willing to go wherever there was a chance for work. He was promised that he would be taken care of just as soon as that chance was presented. Instead of making good, the carrier repudiated its promise to Larrabee and hired a new man when work was available in Fort Worth.

The existing Agreement was negotiated and signed for the benefit of the parties thereto and for that reason it is simply common sense to say that every employe has an interest and a right in every rule which is superior to that of any person not covered by the Agreement. Conductor Larrabee certainly had rights superior to those of any non-employe, to service in a district where he had been promised consideration of a permanent transfer and it was a violation of those rights to hire a new man with-

on the seniority roster. An examination of the Agreement will show no rule which provides that conductors on furlough in other districts shall be recalled when there is an increase in force in any given district.

POINT 3.

THE COMPANY'S ACTION IN TAKING UP W. A. PAGE, FORMER RECEIVING CASHIER AT FT. WORTH, AS CONDUCTOR ON OCTOBER 15, 1940, WAS ENTIRELY PROPER.

The Company being in no way under obligation by the terms of its Agreement with the Conductors to transfer Conductor Larrabee from Oklahoma City to Ft. Worth or elsewhere permanently or temporarily, was perfectly free to hire a new employe at Ft. Worth or take up one from another position. W. A. Page was the Receiving Cashier at Ft. Worth, having been employed by The Pullman Company since October 7, 1918. The position of Receiving Cashier at Ft. Worth which Page had held since December 26, 1934, was abolished on October 15, 1940, and Page was assigned to duty as a conductor. This employe, though holding no seniority as a conductor, was nonetheless fully entitled to the job. He was subject to no displacement from anyone not holding seniority as a conductor in the Ft. Worth District. The request that Conductor Larrabee be put on the Ft. Worth roster with seniority superior to W. A. Page is not based on any right, "contractual" or otherwise. This claim should be denied.

OPINION OF BOARD: There is little, if any, dispute as to the pertinent facts surrounding this claim. Pullman Conductor R. Q. Larrabee entered the service of the company on May 31, 1926 at Oklahoma City, Okla., where he remained in service until October 7, 1930. On the latter date he was furloughed and was out of service in that seniority district thenceforth except for a total of about 43 days. Thereafter he received temporary transfers to other districts where he worked a total of approximately 329 days. On May 8, 1941 he was permanently transferred to San Antonio, Texas, which was another and different seniority district.

Under the rules and in the light of the facts to be considered, Larrabee did not take his seniority from the district from which he was transferred to the new district. He does not claim that right.

On October 10, 1939, Larrabee wrote the agent of the company at Oklahoma City requesting a transfer to one of the districts in the Houston Zone, preferably San Antonio, if satisfactory arrangements could be made with the management. As an alternative he stated that he would consider transfer to the St. Louis District.

On November 18, 1939 the agent, by letter, informed Larrabee that at that time there was no opportunity for temporary transfer either to St. Louis or San Antonio since there was a sufficient number of conductors to take care of requirements. Permanent transfer was not mentioned. The subject was not further pursued until October, 1940.

About October 15, 1940 one W. A. Page, a Pullman Company employe, not a conductor, was assigned to a position of conductor at Fort Worth, Texas, which was in the Houston Zone. Thereafter on October 22, 1940 Larrabee, by letter to the Superintendent of Car Service Employes, called attention to and renewed his request for permanent transfer. Thereafter on May 8, 1941, as has been pointed out, he was transferred.

It is his claim that he was accorded unjust treatment in violation of the terms and meaning of Rule 46, in that he was entitled to displace Page, and is entitled to payment of time lost by reason of the fact that this position was not made available to him. The Rule is the following:

"RULE 46. Hearing and Decision. A conductor disciplined, or who considers he has been unjustly treated, may elect to present his grievance for hearing and decision as hereinafter stated, pro-

vided written request is presented by him within thirty (30) days from the date of the action complained of, except that in cases of discharge, written request for hearing must be presented within ten(10) days from the date of discharge."

It is made clear that the failure of the company to comply with the request of Larrabee for transfer was a violation of no contractual duty or obligation, therefore the question of relief here must depend upon an analysis of the facts and an application of the principles of reason and logic to the spirit rather than the letter of the Agreement.

In the first place then the question is pertinent, assuming but not for the present deciding that the treatment accorded Larrabee was unjust from the standpoint of justice and equity, could such treatment be the basis for giving him a seniority which was denied him under the plain and unambiguous letter of the Agreement?

That this question calls for a negative answer by this Division is obvious. Any other answer would set at naught well established and universally recognized rules for the interpretation of contracts and contractual relationships, it would defeat the very purpose of collective bargaining agreements and make of the National Railroad Adjustment Board an agency for the modification of such agreements. Determination of the wisdom or unwisdom of collective bargaining agreements is not a function of the Board.

Coming now directly to the question of whether or not from the standpoint of equity and justice Larrabee received unjust treatment, in the light of the possibilities and the potentialities of the situation, which it is thought are not far-fetched, to so hold would place a terrific burden upon this company if action such as is here outlined were to obtain recognition as unjust treatment entitling employees to relief under the rules.

Before Page was assigned Larrabee had communicated only with the Agent at Oklahoma City. It was not until after that time that he communicated with the Superintendent of Car Service Employees, whose function it was to transfer assignments. Whether or not the Agent at Oklahoma City transmitted the request to the Superintendent is not disclosed by the record. He probably did. If we stop here and hold that Larrabee was unjustly treated, it would be tantamount to saying that before the Company could exercise its contractual right to fill the position of conductor in any district it must communicate with its agents and ascertain whether or not there were any eligible furloughed conductors in the districts who had made application for transfers to the particular district. Assuming that Larrabee's request was in the hands of the Superintendent and that there were others from the same and/or other districts, which one would the Superintendent be required to select for transfers to avoid a claim of unjust treatment?

In the light of the confusion which would attend such a decision, and the right of the company under the Agreement, it appears clear that the claim here should not be sustained.

This opinion perhaps should end here but it is thought that since complaints are of such frequent occurrence under rules similar to Rule 46 that an attempt at interpretation of its purport, effect and purpose should be made.

Such rules as is this one are dual, and we will deal with this one specifically. In the first place it deals with discipline of the employe. This phase is clear and plain and requires no discussion. The other phase embodied in the following language may not be dismissed so readily:

"A conductor * * * who considers he has been unjustly treated, may elect to present his grievance for hearing and decision as hereinafter stated * * *"

This language to the extent that it relates to treatment in relation to matters not contained in or covered by the rules just about forces the singular conclusion that the rule guarantees a right to the employe with a remedy which ends with a finding of unjust treatment, without possibility of an award retroactively or prospectively for correction or recompense.

There is no doubt that a conductor has the right to timely complain of unjust treatment for matters not covered by the rules. There is no doubt that he may progress his claim here. There is no doubt that this Division has the right to hear his complaint. There is no doubt that this Division has the right to make a finding on the question of unjust treatment, but there power ceases.

The Agreement fails to confer power of discipline against the company for unjust treatment of employes in matters not covered by the Agreement and the Congressional Act under which the National Railroad Adjustment Board was created confers no such power, therefore, findings of unjust treatment by employes on matters not covered by agreement have immediate emptiness. They may however have the beneficial effect of bringing about negotiations to protect against a recurrence of such treatment.

The claim should be denied.

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 employe involved in this dispute are respectively carrier and employe 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1942.