

Award No. 2167

Docket No. PC-2122

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Conductor T. F. Campbell, St. Paul District, has been unjustly treated in the denial by The Pullman Company for full compensation while engaged in exercising authorized precaution in protecting women passengers of The Pullman Company on November 2nd, 1940, on which date he sustained numerous painful and serious injuries due to an unprovoked assault by a soldier who was being removed from the tourist car to a day coach, of which he was a passenger. The performance of the duties by Conductor Campbell were in accordance with certain rules and regulations issued by The Pullman Company.

EMPLOYEES' 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 represented by the Order of Sleeping Car Conductors, effective December 1, 1936. The decision of the highest officer designated for that purpose is shown in Exhibit "A".

Conductor T. F. Campbell, St. Paul District, was the conductor on Northern Pacific Train No. 2, the North Coast Limited, en route Seattle to Chicago, on November 2, 1940. On leaving Butte, Montana, November 2, 1940, Conductor Campbell was informed by a woman passenger that a soldier under the influence of liquor was asleep in the Pullman observation car. While escorting the soldier out of the car to the coach in which he was a passenger, the soldier suddenly turned, and without warning, struck Conductor Campbell on the bridge of his nose knocking Conductor Campbell to the floor of the car platform, breaking his glasses and otherwise committing an assault and battery on his person.

As a result of the unwarranted attack upon Conductor Campbell, who was engaged in the performance of his duties in order to protect Pullman passengers, particularly women and children, and otherwise endeavoring to prevent annoyance to the other Pullman passengers, Conductor Campbell was compelled to remain away from his regular duties from November 3, 1940, to December 16, 1940, and again from January 20th to April 15th, 1941.

The history of the case as developed at the first hearing before District Superintendent C. C. Healey June 18, 1941, is contained in Exhibit "B".

POSITION OF EMPLOYEES: The outstanding fact in this case is that Conductor T. F. Campbell has been unjustly treated by The Pullman Company in that it has denied him full compensation for all time lost as a result of an injury which he sustained during the course of his employment while

Section 19 of the Minnesota Workmen's Compensation Law (Sec. 4279, Gen. Statutes, as amended) further provides:

"4279. Medical, surgical and hospital treatment.—The employer shall furnish such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required at the time of the injury and during the disability to cure and relieve from the effects of the injury; provided that, in case of his inability or refusal seasonably to do so, the employer shall be liable for the reasonable expense incurred by or on behalf of the employe in providing the same; provided, further, that, upon request by the employe, the Industrial Commission may require the above treatment, articles and supplies for such further time as the Industrial Commission may determine, and a copy of such order shall be forthwith mailed to the parties in interest. Any party in interest, within ten days from the date of mailing, may demand a hearing and review of such order. * * *"

In compliance with this Section The Pullman Company tendered the services of its physician, Dr. Warner Ogden, who stood ready throughout the period of Conductor Campbell's illness to render full medical service without charge to Conductor Campbell. This proffer of medical service was, however, declined and a private physician was engaged by Conductor Campbell. As part of the claim in this case the Conductor seeks to secure payment by the Company of this private physician's bill, even though payment is not required by the language of the Minnesota Compensation Act.

The instant claim for the difference between the amount paid under the Compensation Law and the full wages at the monthly rate and the \$84.00 doctor bill constitutes nothing more nor less than the bringing of a civil suit for damages to the National Railroad Adjustment Board. As has been pointed out, both the language of the Railway Labor Act and the decisions of the Board deny the jurisdiction of the Board in this case. The claim of Conductor Campbell should, therefore, be dismissed.

OPINION OF BOARD: It is conceded that Conductor Campbell, while in the course of his duties was assaulted by a passenger; and that he sustained injuries which necessitated his laying off from November 3rd to December 16th, 1940 and from January 20th to April 15th, 1941. He was not paid any wages for the periods he laid off. Considering himself, for that reason, "unjustly treated," in contemplation of Rule 46 of the controlling agreement he asked that he be compensated in wages to the same extent as if he had worked.

Rule 46 provides:

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

This rule does not set up any substantive right which can be enforced by this Board under the Railway Labor Act. See Awards Nos. 42 and 1847.

In form the claim is for wages due under Rule 20 of the agreement which provides:

"Regularly assigned conductors shall be paid their respective established monthly wages on completion of a monthly assignment of two hundred forty (240) hours or less, and overtime at pro-rata hourly rates for all time in excess of two hundred forty (240) hours to two

hundred seventy (270) hours; time in excess of two hundred seventy (270) hours shall be paid for at the rate of time and one-half. Conductors in regular assignment shall be credited for a round trip the number of days there are conductors in the assignment, as covered by bulletined schedule."

That rule simply provides a basis of pay for time **worked**. It would be an utterly unwarranted construction of it to say that it contemplates that a conductor should be paid for the time he is laid off—whether the lay off be from choice, sickness or on account of injuries sustained in the course of his employment.

This is essentially a claim for damages for injuries sustained in the course of employment. For, loss of wages would be an element of damages recoverable in an action under the Federal Employees Liability Act, provided, of course, that claimant could establish a cause of action at all.

While ostensibly the claim is grounded upon the agreement, actually it arises out of a tort for which the carrier may or may not be liable in an action brought before a proper tribunal. In any event this Board has no jurisdiction of the claim because it does not rest upon a violation of any provision of the agreement between the carrier and the Order of Sleeping Car Conductors.

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; and

That the Board is without jurisdiction of the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1943.