# Award No. 3471
# Docket No. PC-3293

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Robert G. Simmons, Referee**

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## PARTIES TO DISPUTE:

## ORDER OF RAILWAY CONDUCTORS—PULLMAN SYSTEM

## THE PULLMAN COMPANY

**STATEMENT OF CLAIM:** The Order of Railway Conductors, Pullman System, claims that The Pullman Company violated the rules of the Agreement between The Pullman Company and Conductors in the service of The Pullman Company, effective December 1, 1936 (Agreement was amended effective September 1, 1945):

(1) When, on December 27, 1944, and subsequent dates, the Company failed to assign a San Francisco District extra conductor to perform specifically designated duties, i.e., station duty, at Sacramento, California, in lifting Pullman tickets for Southern Pacific Trains Nos. 10, 28 and 88; and

(2) We now ask that the San Francisco District extra conductors entitled to this work be compensated for the station duty work on December 27, 1944, and subsequent dates.

**EMPLOYES' STATEMENT OF FACTS:** There is in evidence an Agreement between The Pullman Company and Conductors in its service, bearing effective date of September 1, 1945. This dispute has been progressed up to and including the highest officer designated for that purpose whose letter denying the claim is attached as Exhibit No. 1.

The essential facts in this case are as follows:

In advance of the arrival of Southern Pacific Trains No. 28 at 11:05 P.M., No. 88 at 11:35 P.M. and No. 10 at 12:40 A.M., a Clerk in the Southern Railroad Ticket Office in the passenger station at Sacramento lifts Pullman tickets from passengers who are to board the above trains.

This claim was filed under the provisions of the Agreement dated December 1, 1936, which was in effect at that time. This Agreement has been superseded by the Agreement effective September 1, 1945. Rules 10, 22, 25 and 38, of the Agreements effective December 1, 1936, and September 1, 1945, are involved and have been violated.

**POSITION OF EMPLOYES:** It is the position of the organization that the lifting of Pullman tickets from passengers in the passenger station at Sacramento, in advance of the arrival of Southern Pacific Trains Nos. 28, 88 and 10, is work covered by the Conductors' Agreement.

Such work, when performed by employes other than those coming under the Conductors' Agreement, has been the basis of a claim heard by the Third Division of the National Railroad Adjustment Board, and The Pullman Company was ordered to compensate conductors for such work upon the ground that such service is a part of the work of conductors as provided in their Agreement. (See Award No. 427, dated Chicago, Illinois, April 23, 1937.)

man conductors of the San Francisco District. The illogic of the Organization's position in this dispute readily may be ascertained by a consideration of the fact that the depository service at Sacramento does not any more accurately represent a function of the Pullman conductor than the sale of rail and Pullman transportation by the conductor while en route represents a function of the ticket agent. The condition would become ludicrous if ticket agents were to contend that Pullman conductors were infringing upon their rights by this practice. In the instant case, the service being performed by the ticket office employes is that of a mere interim depository for both rail and Pullman transportation, pending final handling on the respective trains by the assigned railroad and Pullman conductors.

In effect, the Petitioner is imploring the Board to adopt in this dispute a prerogative which it does not possess under the terms of the Railway Labor Act; namely, to assume the function of modifying a collective bargaining agreement in order to enable the Organization to lay claim to all work even remotely associated with that performed by Pullman conductors and by whomsoever initiated. Clearly, it is not a function of this body under the law to determine the wisdom or unwisdom of an agreement arrived at in accordance with the provisions of that law. Such action would render ludicrous and vain all of the results of negotiation and the formulation of similar contracts. The summation of the principles involved in this case is completely expressed in the language of a prior decision of this Board (Award 1847, Third Division Docket No. PC-1776), as follows:

> "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."

We submit that the claim herein presented should be denied: first, because the depository service performed by ticket office employes at Sacramento does not in any sense whatsoever constitute a Pullman station duty conductor assignment; and second, since The Pullman Company has not violated any of the rules of the working Agreement effective December 1, 1936, or of the Agreement effective Septembr 1, 1945, thre is no proper basis upon which this claim can be sustained.

**OPINION OF BOARD:** This claim is in two parts: (1) A charge of rule violation; (2) a request for compensation to the conductors entitled to perform the work. The claims will be considered separately.

Claim (1) is that Southern Pacific employes are lifting Pullman tickets and performing station duty belonging to Pullman conductors under the applicable agreement.

Here the Southern Pacific inaugurated the service involved in this dispute, which is set out in the submission. Briefly, it consists of having some ticket office employe accept both rail and sleping car transportation, make certain notations thereon, envelope the transporttaion, give the passenger identification check and passengers check of the sleeping car ticket to the passenger, all before the arrival of night trains. Train conductors were required to obtain envelopes containing the transportation before departure of the trains and subsequently hand the sleeping car transportation to the Pullman conductors. This arrangement admitted the passenger to the car and permitted the passenger to retire without waiting for either the rail or Pullman conductor to take up transportation tickets. It is referred to as an accommodation to the passenger and an advantage to the Pullman conductor on the train. There is no dispute as to that.

That such an arrangement has the approval of the Pullman Company is obvious and that it benefits the Pullman Company and its conductors on the trains involved is established by The Pullman Company.

This is not a case such as was involved in Award 2153, where the work being done did not involve Pullman Company operations. Here the work being done does involve Pullman Company operations. The question is: Is it work which belongs to the Pullman conductors under the Agreement so long as it is to be done? The question of the continuance or discontinuance of the practice which gives cause to the claim is not involved.

The Carrier makes some point that the work involved is not "lifting" of transportation, as that word is understood in railroad language. This contention is disposed of by the letter of Mr. Vroman, Assistant to the Vice-President of the Carrier, dated August 17, 1945, wherein he refers to the arrangement of "lifting" the transportation.

We think that the work here involved is inherently a part of a Pullman conductor's duties. Although it is not spelled out in the Agreement, it is work which the Agreement contemplates is a part of the work which Pullman conductors are assigned to do. It may or may not be all of the work which a Pullman conductor assigned to station duty (Rule 10) would do, but it is certainly a part of such work. The fact that the Pullman Company permits the rail carrier to perform this work does not alter the Pullman Company's contractual obligation with its conductors. The Pullman Company is accepting the service.

We are of the opinion that the submission shows a violation of the rules and in particular Rule 10, which involves station duty.

As to the request for an allowance of compensation covered by part (2) of the claim, neither party offers any statement showing any conductor or conductors who have been denied this work, or any conductor or conductors who were entitled to it. This issue is entirely overlooked. The parties apparently proceeded on the theory that claim (2) would follow the disposition of Claim (1). Under these circumstances, we are of the opinion that that issue should be remanded without prejudice for further handling on the property.

**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

That the Pullman Company has violated the rules of the agreement and as to that feature of the claim it is sustained. The claim for compensation to conductors entitled to the work is remanded without prejudice for further handling on the property.

AWARD

Claim sustained as to part (1), and remanded as to part (2).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of March, 1947.