Award No. 3691
Docket No. PC-3561

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY
and
DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.

STATEMENT OF CLAIM: The Order of Railway Conductors of America, Pullman System, claims that The Pullman Company and the Delaware, Lackawanna & Western Railroad Company violated Rules 1, 25, 26, 64, 65 and 66 of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company, effective September 1, 1945, and that both companies violated pledges and commitments to labor—

(1) when, on January 1, 1946, Conductors F. O. Miller and J. S. Allen, of the Hoboken District, who were regularly assigned to operate on D. L. & W. Trains Nos. 5 and 6, handling Pullman Car Lines 1190, 1191, 1192 and 1416, between Hoboken, N. J., and Elmira, N. Y., were removed from their assignment; and

(2) We now ask that Conductors Miller and Allen be restored to their assignment on the above lines on D. L. & W. Trains Nos. 5 and 6 and be compensated in full for each trip that they are not permitted to work on these lines beginning with January 1, 1946, and subsequent dates; and

(3) We also ask that the extra conductors of the Hoboken District entitled to the relief trip as shown in Operation of Conductors form effective October 28, 1945, be compensated for the trips they lost beginning with January 1, 1946, and subsequent dates.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in the Service of The Pullman Company, effective September 1, 1945. This dispute has been progressed in accordance with the Agreement and the decision of the highest operating officer of The Pullman Company designated for that purpose. denying the claim, is shown as Exhibit No. 1. The dispute was also formally handled with the highest operating officer of the Delaware, Lackawanna & Western Railroad designated for that purpose (See Exhibit No. 2, attached). The essential facts in this case are as follows:

On January 1, 1946, Conductors F. O. Miller and J. S. Allen of the Hoboken District, who, prior to that time, were regularly assigned to operate on Delaware, Lackawanna & Western Trains Nos. 5 and 6, handling Pullman Car Lines 1190, 1191, 1192 and 1416 between Hoboken, New Jersey, and Binghamton and Elmira, New York, were removed from their assignment on the ground that The Pullman Company had sold five parlor cars operated

desires, however, to reserve the right to review, answer, or otherwise rebut, any statements which may be made in the Organization's submission, or at the hearing which may, in its judgment, require such action.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization comes before us with a claim that both The Pullman Company and the Delaware, Lackawanna and Western Railroad have violated an agreement between the Organization and The Pullman Company. The Organization asks that two Pullman Conductors be made whole for losses sustained as a result of the alleged violation and that they be restored to the positions they held prior to January 1, 1946, on D. L. and W. trains.

The Organization's justification for these claims grows out in two different sets of developments, which the Organization contends are of one piece—a contention which both Carriers involved vehemently deny. These were the events leading to the purchase by the D. L. & W. of five parlor cars from The Pullman Company (and their subsequent operation by the D. L. & W.) and the events leading to the sale of The Pullman Company to a group of railroads, one the D. L. & W., when the D. L. & W. started operation of the parlor cars, the Pullman Conductors were not retained. For the sake of comparisons which must be made, we will list the salient events chronologically in parellel:

January 22, 1944

U. S. District Court (Philadelphia) ordered Pullman, Inc., to dispose of either its manufacturing company or the Pullman Co., owner and operator of sleeping and parlor cars.

May 12, 1945

Pullman, Inc., proposed to sell the Pullman Company to a Buying Groups of Railroads "which may be formed."

August 27, 1945

The D. L. and W. asked the Pullman Company how much it wanted for the five parlor cars the Pullman Company operated on D. L. & W. lines, proposing to buy and operate them for its own account as of January 1, 1946.

October 18, 1945

A number of railroads entered into an agreement to accept the Pullman, Inc., proposal of May 12, 1945, with certain modifications. (The D. L. and W. was not one of the Buying Group at this time.)

October 26, 1945

The Buying Group made its proposal to Pullman, Inc. Among the items was a pledge that "the Pullman Company under its railroad ownership will faithfully perform and keep its obligations to labor under outstanding agreements and practices * * *"

October 26, 1945

(The exact date of the D. L. and W.'s entry into the Buying Group is buried in, if not amitted from the voluminous record in this case. It was before December 1, 1945. However, the Buying Group in the proposal of October 26 purported to speak for present and future members.)

November 26, 1945

The Pullman Company set its price on the five parlor cars.

December 7, 1945

The D. L. and W. accepted the Pullman Company's offer.

January 1, 1945

Sometime before this date, the two conductors whose claim is before us were notified verbally that they would no longer be needed on their regular D. L. & W. runs. On this date the D. L. & W. began operation of the parlor cars for its own account, using railway conductors to perform the parlor car duties previously performed by the Pullman conductors.

January 4, 1946

The Court entered its order approving sale of the Pullman Company to the Buying Group. Paragraph 8 of the Court's order said that was made "without prejudice to the rights of the employes of the Pullman Company under existing contracts and practices."

Other salient facts must be mentioned. Throughout the long court procedure, both before and after January 1, 1945 (appeals were not finally disposed of until the summer of 1947) and ICC hearings in 1947 on the plan of operation of the Pullman Company by the railroads, the operation of sleeping cars was the principal, if not the only subject of consideration. The Pullman Company both before and after its sale, stressed that it was getting out of the parlor car business. Early in the court proceedings, the Pullman Company told the court it proposed to dispose of its parlor cars by sale to the railroads or to a proposed Assets Realization Corporation for disposal or conversion.

The sale of the parlor cars to the D. L. & W. was not unique in Pullman history. The Pullman Company had sold many parlor cars to railroads in years gone by. The record before us, however, establishes only a few instances of sale to and subsequent operation by railroads prior to the antitrust suit.

With this background, we can now review the principal contentions of the parties:

(1) The Organization contends that the sale of the parlor cars was, in fact, part and parcel of the sale of the Pullman Company to the railroads.

The obligations to labor assumed by the railroads in buying the Pullman Company were applicable, then, to the D. L. and W. in buying and operating the parlor cars. One of these obligations was to use Pullman conductors.

The Organization further contends that, for the purpose of application of its agreement with the Pullman Company, that company and the D. L. and W. are one and the same, in view of the pledge mentioned in the preceding paragraph and the fact that the D. L. and W. is an owner (even though its holdings are only 0.51 percent of the total) of the Pullman Company.

The Organization asks to disregard the changes in corporate structure and accompanying corporate contractual changes, and to look at what is left from the employe's viewpoint. The same parlor cars with "Pullman" painted out and "D. L. & W." painted in are making the same runs each day. Two Pullman conductors lost their positions with the new paint job, even though the D. L. and W. and the Pullman Company have just told the court that existing obligations to labor would be preserved. The Organization asks us to right that wrong.

(2) The Pullman Company contends that the sale of the parlor cars to the D. L. and W. was but one of many of similar character over a period of years and had no connection with the sale of the Pullman Company to the railroads. The Organization in no previous sale had insisted that the buying railroad assume the obligations of the Pullman Company to the Organization. Therefore, the Organization has no valid claim against the Pullman Company in this matter. The Pullman Company buttresses its argument with the facts that it has nothing whatever to do with the operation of the D. L. and W. parlor cars, and that in all the proceedings attendant to its purchase by the railroads only the sleeping car business was involved. Its pledge to labor, then, covered only the **sleeping car** business although it certainly would continue to abide by its Agreement in such parlor car business as it continues to engage in.

(3) The D. L. and W. argues that it does not and never has had any agreement with the Organization covering the employment of Pullman conductors, and that it is not and never has been a party to the agreement between the Organization and the Pullman Company. It bought the cars, as it had a right to do, and is operating them in compliance with existing agreements to which it is party. It most certainly did not assume the obligations of the Pullman agreement for the operation of its own D. L. and W. parlor cars when it became part owner of the Pullman Company.

We are inclined to believe that the sale of the parlor cars in this case was a segment of the larger transaction, rather than an isolated one. We therefore can sympathize with the Organization when two members lost their positions in the fact of assurance that labor would not suffer by the larger transaction.

We believe, however, that the Organization has brought its complaint to the wrong forum. This Board is confined by law to the settlement of disputes "growing out of grievances or out of the interpretation or application of agreements." The fundamental issue before us here is whether the Pullman agreement should be applied to certain operations of the D. L. and W. We believe we would be exceeding our jurisdiction to decide that issue.

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 carriers and the employes involved in this dispute are respectively carriers 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 Carriers did not violate any agreement which this Board can find to have been effective.

AWARD

Claim dismissed for lack of jurisdiction on the part of this Board to adjudicate it.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1947.

Serial No. 69

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3691

DOCKET PC-3561

NAME OF ORGANIZATION: The Order of Railway Conductors

NAME OF CARRIER: The Pullman Company, The Delaware Lackawanna & Western Railroad

Upon application of the representative of the employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The award, as is clear from a reading of the document, contains an obvious typographical error in the "Findings." The Third paragraph should read: "That this Division of the Adjustment Board has no jurisdiction over the dispute involved herein; and"

The Fourth paragraph of the Findings reading: "That Carriers did not violate any agreement which this Board can find to have been effective" means that Carriers did not violate any agreement which this Board is authorized to take into consideration.

Reference Joseph L. Miller, who sat with the Division as a member wnen Award 3691 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1948.