

Award No. 3759

Docket No. PC-3760

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and in behalf of the San Francisco District Conductors assigned to operate in Line 144, Denver to Oakland, California, in D&RGW Train No. 5 and WP Train No. 39 (1) that rule 64 of the agreement was violated when conductors were not used to protect sleeping cars in service at Denver from arrival in CB&Q Train No. 39 (scheduled at 8:20 A.M.) until departure of D&RGW Train No. 5 (scheduled at 2:00 P.M.) while these cars were enroute from Chicago to Oakland; and (2) that each of the San Francisco District conductors assigned to this line should be compensated from arrival time of CB&Q Train No. 39, and relief of Chicago Western District conductors at Denver until his scheduled reporting time for his train westbound, from January 12, 1946, and all subsequent dates where payment has not already been made or provided in the applicable rules of the agreement.

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.

Rule 64 of the Agreement of September 1, 1945, reads in part as follows:

"(a) Pullman conductors shall be operated on all trains while carrying at the same time, more than one Pullman car, either sleeping or parlor, in service, except as provided in paragraph (c) of this rule."

"(c) The management shall have the option of operating conductors, porters in charge or attendants in charge, interchangeably, from time to time, on all trains where there is a combined service movement of two Pullman cars of any type in which sleeping or seat space is sold, such as a sleeping and a parlor car, or two sleeping or two parlor cars, having one or both terminals different, and such combined movement is for a period of less than 5 hours railroad scheduled time."

"(e) When passengers are permitted to occupy a car or cars in charge of a conductor beyond the scheduled arrival time at the foreign or home terminal of the conductor, he shall not be

upon arrival at Denver. As passengers entraining at Denver did not board the "Exposition Flyer" until receiving time, there were no further collections to be made until departure of the train from Denver, at which time the San Francisco District conductors were on duty. There being no requirement under the Agreement that conductors be assigned, Management was at liberty to provide conductor service or not to provide conductor service at Denver as the circumstances warranted. When in December, 1946, the Company felt that conductors should be held on the cars laying over at Denver, Management provided conductor service. Prior to that time Management felt that conductors were not needed. Conclusively, the question of whether or not a conductor is required for the protection of Company property is not a proper basis for a claim in behalf of the conductors as the determination of whether or not a conductor is required for the protection of Company property is clearly a managerial function.

CONCLUSION.

The facts as herein set forth clearly support the position of the Company; namely, that the operation complained of was a proper operation established in full conformity with Rule 64 and that conductors were not needed at Denver during the period to protect Company property. The provisions of Rule 64, relied upon by the Organization, clearly do not apply to cars laying over en route. Rather, these provisions apply to trains carrying Pullman cars in service. In providing conductors to operate the entire distance between Chicago and Oakland covered by the train involved in this dispute—the "Exposition Flyer," the Company fully discharged its obligations under this Rule. Finally, the determination of the need for conductors, as far as protection of Company property is concerned, is purely a managerial function. In view of these facts it is apparent that the instant claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents the correct interpretation and proper application of Rule 64 of the Agreement.

Paragraph (a) of Rule 64 provides as follows:

"(a) Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, in service, except as provided in paragraph (c) of this rule."

Through Pullman service on five Pullman cars is provided from Chicago to Oakland, California, on a train known as the "Exposition Flyer". At Lincoln the train picks up one Pullman car to Denver. At Salt Lake City two more cars are picked up for Oakland. The train arrives at Denver at 8:20 A. M. The five through cars remain in the station at Denver until 10:30 A. M. when they are taken by switch engine to the D&RGW yard, turned serviced and then brought back to the station for departure on D&RGW No. 5

From January 12, 1946 to June 10, 1946, the Chicago conductor was released at Denver at 8:35 A. M. and the San Francisco conductor reported for duty at 12:45 P. M. After June 10, 1946, the Chicago conductor was not released until 10:45 A. M.

The Organization claims that the Carrier under the provisions of Rule 64 should have caused the San Francisco District conductor assigned to the run to report at the time the Chicago conductor was released.

We have here a combination of more than two cars.

There is no question that the five cars were "in service" while they were in Denver. Passengers were allowed to remain in the cars all of the time between arrival and departure, and were permitted to come and go

from the cars while the cars were in the station. The personal effects and belongings of all of the through passengers remained in the cars.

If these cars were a train or a part of a train while they were in Denver the Carrier was required to have a conductor with them.

The mere fact that engines were changed could not be material. Nor would it be material that a different Railroad Company took up the operation of the train at this point.

No one would contend that the fact that a train is stopped for any reason for the period of 5½ hours at an intermediate point on its trip would of itself take the train out of Rule 64 for the period while stopped.

The Carrier contends that on the arrival of the Exposition Flyer at Denver the five through cars ceased being a part of a train.

The Carrier emphasizes the fact that the Rule provides for use of conductors on **trains while carrying** more than one car in service. It would seem clear that "while carrying" as used here can only mean "while consisting of", and "while there are more than one car in the train".

The Rule covers "**all trains * * * while carrying more than one Pullman Car, in service**". (Our emphasis)

The Carrier also emphasizes the fact that the movement of these cars during the time in question was by switch engines. This would not keep these cars from being part of a train.

The parties agree that Rule 64(e) was not intended to cover a situation such as this.

The Carrier cites as an interpretation of this Rule a question and answer statement alleged to have been compiled by the Carrier in collaboration with Mr. Wise, Chairman of the Organization, to the effect that it would not be necessary to have a conductor in charge where two cars in military service arrive in a terminal and lay over for several hours before being handled on another train to destination. The Organization disclaims the collaboration attributed and points out that the example cited was for cars "in military service" and not in regular line service.

The Carrier insists that the example in question shows an interpretation of the general application of the rules intended by the parties. It would seem more logical to conclude from the specified definite number of cars and the specified service used in the example that it was an agreed exception to the general rule. If that were true it would serve as an interpretation by the parties in favor of the contention of the Organization.

The fact that in December, 1946, the Carrier started the practice of having a conductor in charge for the full time is also some evidence of agreement by the Carrier with the contention of the Organization.

When we consider all of the facts of this particular case we are of the opinion that these five cars during all of the time they were in Denver constituted a part of a train within the meaning of Rule 64(a) and that the Carrier was required to have a conductor in charge during all of that time.

We find nothing in Rule 64, however, which tells us whether a Chicago conductor or a San Francisco conductor is to be in charge of these cars while they are in Denver. We have nothing on which to base a decision as to whether the Carrier violated Rule 64(a) by failing to postpone the release time of the Chicago conductor or by failing to advance the reporting time of the San Francisco conductor.

The Chicago District Conductors assigned to this Line have filed no claim.

We are, therefore, not in a position to make an award to the conductors of both districts to be divided as they may agree.

We can only remand the case to the parties in the hope that it may be adjusted between them pursuant to the views expressed in this opinion.

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 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 Carrier violated Rule 64(a) of the agreement by not having a conductor in charge of the cars in question from the time of arrival to time of departure. The question of the division of compensation should be remanded.

AWARD

Case remanded for adjustment of compensation due conductors pursuant to Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1948.