Award No. 4000
Docket No. PC-3817

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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 extra conductors of the Chicago Central District, who were entitled to the work, that The Pullman Company violated Rules 25, 38 and 64 of the agreement between The Pullman Company and its conductors, when on November 16, 1946 two (2) special trains, each carrying eight (8) standard Pullman cars in service were operated out of Chicago without the services of a Pullman conductor, and that by reason of this violation such extra conductors should be compensated for this work to which they were entitled in addition to all other earnings for that month.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between The Pullman Company and the conductors in its service bearing effective date of September 1, 1945. Also a "Memorandum of Understanding", Subject: "Compensation for Wage Loss", dated August 8, 1945, attached as **Exhibit No. 1. 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. 2.

On November 16, 1946, two special trains were operated over the New York Central Railroad from Chicago to Notre Dame (University Campus Siding, Notre Dame, Indinia,) and return. Each of these trainswas composed of **eight Pullman sleeping cars** in addition to New York Central passenger train equipment.

These two trains were operated for the accommodation of persons enroute to and from a football game at Notre Dame University on the date named. These sleeping cars were owned by The Pullman Company. They were each **serviced by a Pullman porter.**

The Pullman Company representatives have stated to representatives of the Conductors that the New York Central Railroad Company paid a charge of $33.00 per day for use of these cars, plus wages of the Pullman porter; that they were furnished the New York Central Railroad on a "rental basis", rather than on a "per diem" basis; that The Pullman Company did not participate in any way in the revenue received for accommodations used by passengers handled on these trains.

Special tickets were printed and used by the New York Central Railroad for ticketing the passengers using these Pullman cars. These tickets were of two types (1) covering "passage, including parlor car accommodations indicated below" and (2) "Parlor Car Ticket Good for Space indicated

Erie railroad in the case cited, did not contract with anybody to do this work for it, and no such work was done by the Company or for it on the New York Central special trains. The conductors' work on those trains was work of the New York Central performed for its benefit by its employes, and from which work The Pullman Company derived no advantage or benefit.

CONCLUSION

The New York Central had the right to conduct its own operation of its special trains, just as it has conducted its own regular parlor car operations for many years. The Pullman Company had the right to rent cars to the railroad for use by that railroad on its special trains. The fact that those cars were rented by the railroad rather than owned by it does not affect the fact that they were operated solely by the railroad and for its own account, nor does that rental convert railroad conductor work into Pullman conductor work. There is no merit in the Pullman conductors' claim that they were entitled to work which was performed solely for the account of the New York Central by its own employes and which was not work by or for the account of The Pullman Company or under any control by this Company. Neither Rules 25, 38 and 64 nor any other rules of the working Agreement lend any support to this claim of the Pullman conductors. The claim should be denied.

Exhibits not reproduced.

OPINION OF BOARD: On November 16, 1946, the New York Central Railroad operated two special trains from Chicago, Illinois, to South Bend, Indiana, and return. They were operated for the accommodation of persons desiring to attend a football game at Notre Dame University on the date named. In addition to New York Central passenger train equipment, each train used eight Pullman sleeping cars owned by the Pullman Company. Each car was serviced by a Pullman porter. The cars were rented to the New York Central for a charge of $33.00 per day, plus the wages of the Pullman porter. The Pullman Company participated in no other way in the revenue derived from the service furnished. New York Central special tickets were used. They were lifted by New York Central train conductors. It is the contention of the Organization that the conductors' work on these Pullman sleeping cars belonged to Pullman conductors and that their Agreement was violated when Pullman conductors were not used.

Rule 38 (a), current Agreement provides:

> "All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra conductors of that district when available, except as provided in paragraph (e)."

Rule 64 (a), current Agreement, provides:

> "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."

The Pullman Company operates on many of the railroads of the country. It owns or leases the cars known as Pullman cars and operates them over the railroads under agreements made with them. In other words, Pullman cars constitute the physical equipment with which the Pullman Company performs its Carrier service. In performing this service, many conductors, porters, attendants, and other employes are required. Collective agreements have been made with each class. In the case of Pullman conductors, it was agreed that Pullman conductors would be used on all trains carrying two or more Pullman cars in sleeping or parlor car service. In other words, the Carrier agreed with the conductors that whenever it placed two or more Pullman cars in service on any train, a Pullman conductor would be assigned.

In the present case the Carrier contends that it rented its cars to the New York Central. In other words, it contracted out its equipment in such a manner that it claims it can ignore Rule 64 (a).

We agree that the Pullman Company can place its equipment in service in any way and on any terms that it sees fit. But if they put Pullman cars in service, the provisions of Rule 64 (a) must be complied with. It cannot defeat the rule by the simple expedient of sending them into service on the basis of daily rental plus the wages of porters and avoid its obligations to Pullman conductors.

The Carrier contends that the New York Central was operating the trains including the Pullman cars and that the Pullman Company could not place its conductors on the trains even if it wanted to. Of course, the Pullman Company may have obligated itself with the New York Central not to use their own conductors. But, even so, such action in no manner relieves the Pullman Company of its contractual obligations to its conductors. Under Rule 64 (a), Pullman conductors should have been used on the two trains here involved. The Pullman Company cannot farm out its equipment for sleeping or parlor car service and deprive its conductors of the work which was guaranteed to them under the Agreement. If the contract could be circumvented by so simple an expedient, it would be of little or no benefit to the employes within it. We must construe it in the sense intended rather than to give it a technical meaning that would defeat the very purpose of the contract itself. When the Pullman Company placed these cars in service, by whatever method it saw fit to employ, it did not relieve itself of its contractual obligations towards its own 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 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 Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.