

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker—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 conductor of the Omaha District entitled to be called to operate Pullman cars in C&NW Train 2nd No. 22, February 3, 1947, that The Pullman Company violated rules 25 and 38 of the Agreement between The Pullman Company and its conductors,

(1) when on February 3, 1947, and subsequent dates, C&NW Train No. 22 was operated in two sections out of Omaha, and an extra conductor of the Omaha District was not used on the second section of Train No. 22, and

(2) that by reason of these violations the extra conductor entitled to this work on February 3, 1947, and subsequent dates when a like operation was carried out, should be compensated for a service trip Omaha to Chicago.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between The Pullman Company and conductors in its service, effective 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.

Chicago Northern District conductors were assigned, at the time of this occurrence, to operate between Chicago and Pocatello, westbound, in C&NW train No. 21, Chicago to Omaha, and in UP trains No. 21 and No. 15, Omaha to Pocatello, and eastbound in Union Pacific trains No. 16 and No. 22, Pocatello to Omaha, and C&NW train No. 22, Omaha to Chicago.

Omaha District conductors were assigned at the time of this occurrence to operate Omaha to Chicago in C&NW train No. 22; Chicago to Ogden in C&NW and UP train No. 21, (Chicago to Omaha in C&NW No. 21, and Omaha to Ogden in UP No. 21); and Ogden to Omaha in UP train No. 22.

The Chicago Northern District conductor in this run was assigned by Operation of Conductors Form 93.126 to operate Lines—

- 305—Chicago-Portland; between Chicago and Pocatello in both directions
- 376—Chicago-Los Angeles; between Chicago and Green River in both directions
- 394—Chicago-Salt Lake; between Chicago and Green River in both directions
- 324—Chicago-Omaha; between Chicago and Omaha in both directions
- 330—Chicago-Omaha; between Chicago and Omaha in both directions

Chicago Northern District conductor was assigned (Exhibit 1, pp. 1-2). The Organization very well knows, however, that there is no merit to this argument. While conductor operations are designated by line numbers for accounting purposes, conductors are in reality assigned to trains rather than to particular lines. In fact, the Organization has in the past acknowledged that conductors are assigned to trains rather than to any particular line or lines.

Further, there is no basis in logic for the claim of the Organization. The Company assigned two conductors to operate regularly on train No. 22 to handle the many duties required of conductors on a eleven-car train. When train No. 22 was split at Omaha and operated from that point to Chicago in two sections, there was no need for two conductors on either section.

The claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: For purposes of clarity the facts governing this controversy will be summarized as briefly as possible.

At the time of the occurrence of the incident resulting in the filing of this claim, in form as set forth in the submission of the parties, there were two Pullman Conductors employed on C&NW-Union Pacific trains (21) west-bound and 22 (eastbound) between Chicago and Green River, Wyoming. From Green River one of these conductors operated in Union Pacific trains 21 and 22, Green River to Ogden, and the other operated in Union Pacific trains 15 and 16, Green River to Pocatello.

The assignment of the conductor operating Chicago-Pocatello was one to which conductors of the Chicago Northern District held seniority. The conductors of the Omaha District held seniority to the assignment of the conductor operating Chicago-Ogden.

The conductor of the Chicago Northern District operated Chicago-Pocatello and return while the conductor of the Omaha District operated Omaha-Chicago-Ogden-Omaha.

In February 1947 twelve regular Pullman lines with 13 sleepers were scheduled to operate between Green River and Chicago on Train No. 22. The number of cars involved accounts for the regular assignment of the two Pullman conductors to such train which normally operated in one section Omaha to Chicago.

Under ordinary conditions the Chicago Northern District conductor handled 8 cars in as many lines while the Omaha District conductor handled 5 cars in four lines.

On February 3, 1947, for operating reasons, the C&NW split train No. 22 for Chicago into two sections at Omaha.

The Chicago Northern District conductor was taken from the first section, notwithstanding three of the six cars ordinarily operated by him continued in that section, and was instructed to handle three cars of his regular assignment which were placed in the second section of the train. The Omaha District conductor was required to take charge of the three cars of the regular assignment of the Chicago conductor, together with the five cars regularly handled by him, and operate them in the first section.

The parties agree as to the foregoing factual situation. It is likewise conceded by the respondent in its ex parte statement that if the service performed by the Chicago Northern District conductor on section 2 of train No. 22 was extra service, the extra conductors of the Omaha District would have been entitled to that work. Hence the issue without further reference to the facts can be stated thus. Under the existing Agreement between the parties was the service performed by the Chicago conductor on section 2 of train No. 22 a part of his regular assignment or was it extra service belonging to the conductors of the Omaha District?

It will be necessary to quote from rules of the existing Agreement relied on by claimant as requiring the allowance of its claim.

Rule 38 states:

"(a) 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 36 reads:

"A conductor operating in regular assignment shall not be used in service outside his assignment except in case of emergency where there are no extra conductors available, and as provided in paragraph (d) of Rule 38."

Rule 22 provides:

"Conductors shall be paid at their respective established hourly rates for all hours credited each month for extra road service, * * *

Q-1. What is 'extra road service'?

A-1. 'Extra road service' is any revenue producing trip, exclusive of an extended special tour, not covered by a conductor's regular assignment.

Q-2. Is the work of conductors operating on extra sections of trains and of helper conductors to be classed as 'extra road service'?

A-2. Yes."

Conceding, as the Company points out, the sole variation from normal operation arose by reason of the C&NW splitting train No. 22 and operating it in two sections instead of one, east of Omaha, and that the operations scheduled by the Company were carried out in the lines scheduled and with the regularly assigned conductors in charge, does not in our opinion compel a conclusion the Chicago conductor in operating the second section of train No. 22 was engaged in the performance of his regular assignment. Our view is his regular assignment was the performance of the job bulletined and bid in by him on train No. 22 as normally operated and that requiring him to perform that same work in a newly created section of the same train resulted in using him in service outside his assignment. Therefore, taking him from section 1 and requiring him to thus operate in section 2, since it is not contended or even urged there was an emergency where no extra conductors were available, was in violation of Rule 36. It necessarily follows that service so performed was extra work and that failure to assign it to available extra conductors of the Omaha District constituted a violation of Rule 38.

There might in our opinion be some doubt as to the soundness of the conclusion just announced were it not for the provisions of Rule 22 which, while it is true they have specific reference to payment of wages for extra service, clearly and definitely indicate the Agreement contemplates that the work of conductors operating on extra sections of trains is to be regarded as extra road service. This claim, as has been inescapably and conclusively demonstrated, is based upon work performed by a conductor in operating on an extra section of a train.

The fact the Company is not responsible for the physical operation of trains on the C&NW, as it suggests, does not inure to its benefit or change the result. We must assume the parties were aware of that situation when they entered into the contract and they are now bound by its clear and unequivocal terms classifying work of conductors on extra sections of trains as extra work or extra road service.

Apparently recognizing the weakness of its position the Company in its submission of the issue points to the answer to Question 1 of Rule 22 and

argues that it restricts "extra road service" to what is there stated. The argument ignores Question 2 and its answer which materially extends the scope of such term as used by the parties in their contract.

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 Employees involved in this dispute are respectively carrier and employees 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 Company violated the current Agreement.

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.