Award No. 9793
Docket No. PC-9886

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor H. M. Grigsby, Dallas District, that:

1. Rules 25, 38, and 64 of the Agreement between The Pullman Company and its Conductors were violated when under date of August 30, 1955, Pullman Car McFerrin was operated in service on T & P train 8 from Dallas, Texas to Marshall, Texas, without the services of a Pullman Conductor or a Porter-in-Charge.

2. We now ask that Conductor Grigsby be credited and paid under the applicable rules of the Agreement for a service trip Dallas to Marshall, and for a deadhead trip Marshall to Dallas.

EMPLOYES' STATEMENT OF FACTS:

I.

A Conductor run, in accordance with the rules of the Agreement, has been established on T&P trains 7 and 8 between Dallas, Texas and El Paso, Texas, designated on the "Operation of Conductors" form as Line 3518. Copy of the "Operation of Conductors" form that was in effect on August 30, 1955, is attached as Exhibit No. 1.

The Dallas District Conductors assigned to T&P trains 7 and 8 handle two Pullman cars operating in Lines 3518 and 3501 Dallas to El Paso on the outbound trip. On the inbound trip El Paso to Dallas, the Dallas District Conductors handle three Pullman cars operating in Lines 3518, 3501 and 3527.

II.

No Pullman equipment is scheduled to be operated on T&P train 8 east of Dallas.

OPINION OF BOARD: On August 30, 1955 on train No. 8 in Pullman Car McFerrin there was a passenger with a heart condition occupying a Drawing Room. It was decided that because of the passenger's condition the McFerrin car would be operated through to Marshall instead of being detached at Dallas. This created the need for a Conductor or a Porter-in-Charge to take care of this extra work.

The Pullman Agent instructed porter A. G. Raven, who was the regularly assigned Porter on this car and had arrived in Dallas in service on this date, to remain on duty and to operate as Porter-in-Charge from Dallas to Marshall.

The rule involved in this dispute is Rule 64 (b) and the pertinent part of that rule is as follows:

> "Management shall have the option of operating conductors, porters in charge, or attendants in charge, interchangeably, from time to time, on all trains carrying one Pullman car, either sleeping or parlor, in service . . ."

The answer to the disposition of this claim turns on the question of the definition of a Porter-in-Charge. This problem has been the question of much dispute between the parties. It was discussed in the 1950 Emergency Board hearing and was given as a reason why the company should furnish the Organization a list of porters-in-charge, identifying those who no longer desired to perform such service and withdrew from such service. In the record herein there is a lot of discussion as to what is a porter-in-charge. The company says that he was on the roster at El Paso and the Organization says that he was not. The Rule says only that a porter-in-charge may be used but does not define or describe a porter-in-charge. The Organization relies on Rule 16, but Rule 16 is a rate of pay.

In this record Mr. Davis describes a porter-in-charge as follows:

> "A porter in charge, after two years in service, who has had instructions and has operated and can operate in charge is qualified to operate in charge is considered as a porter in charge and is subject to call as a porter in charge or to operate as a porter in charge at any time."

The Organization agrees with this description as far as it goes but says that he must also have his equipment.

In this case Carrier assigned Porter Raven to this work and paid him the porter-in-charge rate under Rule 16. They knew that he did not have his equipment when he was assigned to the work. It would seem that the assignment of an employe to a job without proper equipment, as in this case would be the responsibility of the Carrier and not the employe or the Organization. In this particular case he did not need any equipment. The fact that the parties have had negotiations about defining a porter-in-charge indicates that perhaps something should be added to this rule but that is not the province of this Board. Under the wording of this rule and the circumstances in this case it cannot be said that Carrier violated Rule 64.

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 Employe involved in this dispute are respectively Carrier and Employe 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1961.