# Award No. 10140
# Docket No. PC-10820

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**J. Harvey Daly, Referee**

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## PARTIES TO DISPUTE:

## THE PULLMAN COMPANY

## ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

**STATEMENT OF CLAIM:** The Statement of Claim as expressed by the Order of Railway Conductors and Brakemen, Pullman System, is as follows:

". . . for and in behalf of Conductors W. M. Hadley, H. P. Odom and R. Q. Larrabee, of the San Antonio District, in which it is contended that The Pullman Company violated Rules 25, 38, 64 and the Memorandum of understanding regarding Conductor and Optional Assignments and Appendicies attached to this Memorandum, shown on pages 83-89 inclusive, current Agreement, when the Company discontinued the conductor assignments on GC line train #15 Southbound, Odem to Brownsville, and on GC lines train #16 Northbound, Brownsville to Odem.

Because of this violation we now ask that Conductor W. M. Hadley, who was regularly assigned to the conductor run between Odem and Brownsville be credited and paid just as though he had continued in his assignment.

We also ask that Conductors Odom and Larrabee, who were entitled to perform the extra work in the conductor run on the above trains designated as line 3641 be credited and paid for all extra work that was due to be performed in this conductor run.

The Memorandum of Understanding Concerning Compensation For Wage Loss is also involved."

**EMPLOYES' STATEMENT OF FACTS:**

I.

There is an Agreement between the parties, bearing the effective date of September 21, 1957, on file with your Honorable Board and by this reference is made a part of this submission the same as though fully set out

discontinued the Odem-Brownsville conductor run would have been performed by Conductors H. P. Odom and R. Q. Larrabee by virtue of the rule (Exhibit A, p. 10). The Company submits that Rule 38 (a) would have application only in the event it were first determined that the Company's action in discontinuing Pullman conductors on the Odem-Brownsville run were improper. The Company has shown, however, that its action was not improper. Therefore, Rule 38 (a) was not violated and Conductors Odom and Larrabee do not have a valid claim.

Finally, in the hearing, the Organization cited Rule 25, paragraph (c), which provides that in any district the right to perform all Pullman conductor's work arising therein as established by past practice and custom shall belong exclusively to the conductors having seniority in the district, subject to exceptions set forth in other rules. The Organization alleged that under this rule San Antonio conductors were entitled to continue the work of handling the Houston-Brownsville car between Odem and Brownsville. In reply, the Company wishes to point out that Rule 25(c) grants conductors the right to perform conductors' work in the manner established by past practice and custom only after it is determined that conductors' work is present. Moreover, Rule 25 (c) explicitly makes conductors' rights under that rule subject to these exceptions set forth in other rules. In the case at hand, Rule 64 (b) expressly granted the Company the right to operate porters-in-charge for the entire trip on the Houston-Brownsville car in question. When the Company discontinued the assignment of conductors to this car on May 10, 1958, therefore, no conductors' work was present and Rule 25 (c) had no application.

## CONCLUSION

The Pullman Company has shown in its ex parte submission that on May 10, 1958, it discontinued operation of conductors on a single car run between Odem and Brownsville and that this action was in conformity with Rule 64 (b) of the working Agreement. The Company has also shown that the run discontinued on May 10, 1958, was not a "frozen" run covered by the Memorandum of Understanding regarding Conductor and Optional Assignments and that the Company did not violate this Memorandum. Finally, the Company has shown that it did not violate Rules 25, 38, 64 or any other rule of the working Agreement, as alleged.

The position of The Pullman Company in denying this claim should be upheld.

All data presented herein in support of the Company's position have heretofore been presented in substance to the employes or their representatives and made a part of this dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is a rules interpretation case.

The Organization states the issue as follows:

The key rule involved in this case is Rule 64 of the current Agreement and the Memorandum of Understanding Regarding Conductors and Optional

Assignments — executed on August 8, 1945, and re-executed December 29, 1950, and again on September 21, 1957.

The pertinent portions of the above regulation are as follows:

"RULE 64. Conductor and Optional Operations. (a) Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping car parlor, in service, except as provided in paragraph (c) of this Rule.

"(b) 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; except with respect to certain conductor operations as specifically covered in the Memorandum of Understanding Regarding Conductor and Optional Assignments re-executed at Chicago, Illinois, September 21, 1957.

"(c) 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.

The pertinent provisions of the Memorandum of Understanding Regarding Conductor and Optional Assignments are as follows:

First Paragraph: "In the application of Rule 64, entitled "Conductor and Optional Operations," as contained in the Agreement, effective September 21, 1957, it is understood and agreed by and between The Pullman Company and its conductors, represented by the Order of Railway Conductors and Brakemen, that the one Pullman car runs listed in Appendix A, attached hereto and made a part hereof, shall continue to be operated in charge of conductors for as long as such runs remain in existence. Should any such run be discontinued and subsequently restored it shall be a conductor operation.

Third Paragraph: "It is further understood and agreed that all runs listed in Appendix B, attached hereto and made a part hereof, shall likewise continue to be operated in charge of conductors for as long as such runs remain in existence. Should any such run be discontinued and subsequently restored it shall be a conductor operation.

Fourth Paragraph: "It is further understood and agreed that any run listed in either Appendix A or B shall continue to be operated by conductors between the new terminals if the line is shortened. If any run so listed is lengthened it shall continue as a conductor operation at least between the terminals to which conductors operated at the time the run was lengthened."

"APPENDIX B

"Runs in Which Conductors Operate in Charge of but One Car for a Portion of a Trip

| "Line No. | Points between Which Conductors Operate | Trains |
|---|---|---|
| "2255 | Asheville-Goldsboro | So. 22, 21 |
| 3392 | Ft. Worth-Tulsa | Frisco 508, 507 |
| 3521 | El Paso-Sweetwater | T.&P. 6, 7 |
| 160 | Kansas City-Billings-Lincoln | C. B. & W. 43, 42, 44 |
| 3717 | Little Rock-New Orleans | Mo. Pac. 103, 116 |
| 2292 | Norfolk-Cincinnati | N. & W. 15, 16 |
| 2648 | Norfolk | So. 3, 1 |
| | Winston-Salem | So. 8, 112 |
| | Raleigh | So. 13, 32, 4 |
| 3308 | San Antonio | Mo. Pac. 215, 15, 115 |
| | Mission | Mo. Pac. 116, 16, 216 |
| 3307 | Shreveport-Texarkana | K. C. S. 16, 1 |
| 2331 | St. Louis-Pittsburgh | P. R. R. 1/32, 155, 33 |
| 3571 | St. Louis-Des Moines | Wab. 11, 14, 18 |
| 2005 | Tampa | A. C. L. 75 |
| | Sarasota | A. C. L. 76 |
| | Jacksonville | A. C. L. 75 |
| 4018 | Wichita-Dallas | Santa Fe 11, 15, 65, 66, 16, 12 |
| 2042 | Wilmington-Atlanta | A. C. L. 55, Ga. 3) |
| 2027 | Atlanta | Ga. 4, A. C. L. 53) |
| | Charleston | A. C. L. 52) |
| | Sumter | A. C. L. 54) |
| | Wilmington" | |

The Memorandum of Understanding establishes the fact that the San Antonio to Mission run was a frozen run.

Appendix B. supra, indicates trains 15 and 16, operated on the run in August 1945, and that the San Antonio to Mission return run was a frozen conductor operated run. Furthermore, it was not denied that trains 15 and 16 are still operating on the remaining segment of that run — namely, the segment between Odem to Harlingen and extended to Brownsville.

That the Carrier has the right to shorten, lengthen or discontinue runs in keeping with contractual provisions, is unquestioned. Neither can it be disputed that if a frozen run is shortened — the remaining segment is still a frozen run.

There has been much discussion in this case whether conductors are assigned to lines or trains. The record and previous awards strongly support the position that Conductors are assigned to trains. In Award No. 2762 Referee Parker stated ". . . . the parties understood conductor operations were made up of trains and that conductors were assigned to trains, — trains which were designated and identified not by the Pullman Company, but by the railroad over-which its cars operate." In Award 4007 — Mr. H. R. Lary, the Pullman Company's Supervisor of Industrial Relations stated: "While conductor operations are designated by line numbers for accounting purposes, conductors are in reality assigned to trains rather than to particular Lines."

Accordingly, it is our determination that conductors are assigned to trains not lines.

On June 27, 1952, the frozen San Antonio to Mission run was shortened. The two segments between San Antonio and Odem and between Harlingen and Mission were discontinued — leaving only the segment between Odem and Harlingen. The Carrier subsequently extended the run from Harlingen to Brownsville, Texas.

The Company maintains that initially the frozen San Antonio to Mission run was known as line 3308; that line 3308 was discontinued on March 24, 1948 and replaced by line 3671 on that same date; that line 3671 was discontinued on June 27, 1952; and that line 3641 was not inaugurated until March 28, 1948 — and on another run.

It must be noted that lines 3308, 3671 and 3641 refer merely to the numbers of the Pullman Cars in the operation or run.

3641 was a Houston-Brownsville Pullman car that operated with trains 15 and 16 on the Odem to Brownsville run. It is significant that from Houston to Odem — Houston conductors handled Car 3641; but from Odem to Brownsville — San Antonio conductors handled Car 3641.

From the facts set forth above, it is obvious that the following questions must be answered:

1. Are lines or runs frozen?

2. Is the Odem to Harlingen to Brownsville return run still a frozen run?

For the answer to the first question, let us review the provisions of the "Memorandum of Understanding Regarding Conductors and Optional Assignments" set forth above. The word "run" or "runs" appears eleven times in that Memorandum while the word "line" is used only once and then in the following context ". . . between the new terminals if the line is shortened.

Now let us turn to the record and the interchange of remarks between Mr. H. P. Odom, Committeeman and Employe's Representative, and Mr. R. C. McCarthy, Field Representative, Employe and Labor Relations Department — which is as follows:

> "Mr. Odom: Is it your contention, Mr. McCarthy, by changing the line number that would unfreeze the run?"
>
> "Mr. McCarthy: No, I think you know better than that, Mr. Odom, . . . . . recognizing the fact that the mere change of line number would not make any difference in the position of the run."

If line numbers determined whether or not a run were frozen, the Carrier could, merely by changing the line number, "unfreeze" a run — which would most certainly be an effective way — albeit an improper one — of unilaterally terminating a bilaterial agreement.

Therefore, it seems that runs are frozen and not cars or lines. The question then of whether or not line 3641 was in existence at the time the

Memorandum of Understanding was executed has no position whatsoever in this discussion.

Now let us consider the second question — namely — "Is the Odem to Harlingen to Brownsville return run still a frozen run?"

When the Memorandum of Understanding was negotiated in 1945, trains 15 and 16 operated on the frozen run from San Antonio to Mission. In 1952 and in 1958 — trains 15 and 16 still operated on the remaining segment of that run — namely, the Odem to Harlingen segment. "Even today", reportedly, "trains 15 and 16 are still operating on that run". Line 3641 was merely the designated number of a car assigned to trains 15 and 16.

On June 27, 1952, the Carrier "discontinued operation of the San Antonio-Mission car designated Line 3671, and maintains that "as a result, the 'frozen' run ceased to exist". The Carrier, however, continued, reportedly for racial reasons, the conductor operation between Odem and Harlingen — and extended to Brownsville — from June 27, 1952 to May 10, 1958. On the latter date, the Carrier discontinued the services of conductors on the Odem to Brownsville return run for the reason of economy and replaced them with porters-in-charge.

If the Odem to Harlingen to Brownsville operation was no longer a frozen run, the Carrier's action in permitting it to continue to be a conductor operation for approximately six years — would seem to be an extremely generous gesture. However, when one examines the Operation of Conductor Form 93:126 — offered in evidence — dated June 26, 1952 and effective June 27, 1952, another reason for the Carrier's action becomes readily apparent. Incidentally, Form 93:126 is the form that guides and controls the operation of conductors all over the United States.

On page 2 of that form — in answer to item 1 — the following notation appears:

"1. Show definite information why new form is being prepared.

"Discontinuance of L-3671, San Antonio-Mission and SAU&G train's 215-216 between San Antonio and Odem, and the assignment of San Antonio conrds. to this train south of Odem acct. frozen operation."

The Carrier maintains that the above statement was merely a clerical error and was prepared in error. However, the Board is disinclined to share that view. A form that bears the approval of Superintendent W. P. Mahaffey, the initials of an Assistant Vice President, and the stamp of the Manager-Car Service Employes" cannot — by any stretch of the imagination — be construed as a simple clerical document. It is, in our opinion, a document of the utmost importance and, therefore, it is measured and weighed accordingly.

The Carrier's contention regarding the racial question is not supported by the facts and is, accordingly, dismissed.

In view of the foregoing, the Board must conclude that the Odem to Harlingen to Brownsville return run is still a frozen run. Consequently, it is the decision of the Board that:

The Pullman Company

1. Violated the Agreement and the Memorandum of Understanding Regarding Conductor and Optional Assignments and Appendicies attached to this Memorandum;

2. The Claimant, W. M. Hadley, who was regularly assigned to the conductor run between Odem and Brownsville should be credited and paid just as though he had continued in his assignment;

3. Conductors R. Q. Larrabee and H. P. Odom, who were entitled to perform the extra work in the conductor run on the above trains should be credited and paid for all extra work that was due to be performed in this conductor run.

4. Compensation to be paid Claimants must be in keeping with current contractual provisions.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Company violated the Agreement and the Memorandum of Understanding Regarding Conductors and Optional Assignments.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1961.

**DISSENT TO AWARD NO. 10140, DOCKET NO. PC-10820**

Award 10140 is in error, in the first place, in concluding that, if conductors are assigned to trains and not lines and inasmuch as line numbers may be changed unilaterally, runs are frozen and not cars or lines. The fallacy of this conclusion is, first, because train numbers also are subject to change unilaterally, and second, because herein there was no dispute between the parties concerning the Organization's admission as follows:

"* * * Negotiations and hearings before an Emergency Board in 1945, under the Chairmanship of E. M. Tipton, resulted in agreement with the Company to freeze **one-car conductor operations** on 52 runs, effective September 1, 1945." (Emphasis added)

The record irrefragably shows that, prior to June 27, 1952, neither the car of Line 3308 nor the car of any other line ever was a "one-car conductor operation" between Odem and Harlingen; on the contrary, the record shows that multiple car operation was previously in effect between these points.

Furthermore, the listing of line numbers on Appendix "B" is more significant than the listing of train numbers. Obviously, the line number is the key which identifies the "one-car conductor operation" on the trains listed which was frozen; in the instant case, it only could have referred to the "one-car conductor operation" of Line 3308. In any event, Award 10140 also is in error in assuming that the parties engaged in a vain and useless act in listing the line numbers (Awards 7658, 6723, 6311, 4322), and this Board is without authority to add thereto the "one-car conductor operation" of Line 3641 which admittedly was not in existence when the 1945 Agreement was negotiated.

Furthermore, if the run between San Antonio and Mission were frozen for the complete round trip between these points, which is denied, the separation between Appendix "A" and Appendix "B" would have been unnecessary and superfluous. Award 10140 is in error in assuming that the parties engaged in a vain and useless act in making this separation.

In addition, the Organization admitted that the Memorandum of Understanding does not apply to that portion of the run between Harlingen and Brownsville and that the alleged violation occurred only covering that portion of the run between Odem and Harlingen.

For the foregoing reasons, among others, we dissent.

**/s/ W. H. Castle**

**/s/ P. C. Carter**

**/s/ R. A. Carroll**

**/s/ D. S. Dugan**

**/s/ J. F. Mullen**

## LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT — DOCKET PC 10820, AWARD 10140

Running true to form the habitual dissenters attempt to point out how wrong the Referee was in his findings and Award. The dissent is not only specious, but palpably erroneous in its contentions.

There is no merit to the contention that line numbers are the controlling factor. That contention is diametrically opposed to the position taken by Mr. H. R. Lary, Supervisor of Industrial Relations, The Pullman Company in Docket PC 2466 — Award 2762, in which he stated:

"* * * Pullman Conductors actually are assigned to particular trains rather than to particular lines. A Conductor operating in a particular assignment may handle many lines."

Award 2762 held in part:

"What is meant by runs as used in Rule 54 of the current Contract? It must be remembered that when it was adopted the parties understood Conductor operations were made up of trains, and that Conductors were assigned to trains — trains which were designated and identified not by the Pullman Company, but by the railroad over which its cars operate * * *."

Mr. Lary reaffirmed his position in Docket PC 3963 — Award 4007 that Conductors are assigned to specific trains — not lines.

Inasmuch as the dissenters were fully aware of the Carrier's position in both Dockets, supra, it follows that the argument with respect to "lines" as being the controlling factor, is patently erroneous.

It is fundamental that anyone who attempts to distort or misconstrue the agreed upon application of the terms of an Agreement for the purpose of misleading others in order to support an untenable position, as here, cannot be trusted under any circumstances.

The record does not support any of the contentions made in the dissent; therefore, they are valueless.

Rule 64 and the "Memorandum of Understanding Regarding Conductor and Optional Assignments" are clear and unambiguous and provide that so long as a "frozen" run — or any part thereof — remains in existence, a Conductor will be assigned to it. Because the run here in reference was shortened did not remove it from the "frozen" category, and was so recognized by the Carrier as evidenced by the "Operation of Conductors Form" dated June 26, 1952.

The conclusion of the majority in Award 10140 is correct. As the Board stated in Award 5079 - - - -

"This Board has consistently held by a long line of Awards that the function of this Board is limited to the interpretation and application of Agreements as agreed to between the parties."

The Award is proper in accordance with the facts of record and the controlling Rules.

/s/ H. C. Kohler

## CARRIER MEMBERS' REPLY TO LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NO. 10140, DOCKET NO. PC-10820

The Labor Member's Reply to Carrier Members' Dissent emphasizes the importance of line numbers. Since conductors are assigned to runs on trains

which handle other lines, it must be elementary that the line number was considered paramount by the parties in designating the particular one-car conductor operations which was frozen. Attempts to repudiate inclusion of the line numbers speak for themselves.

/s/ **W. H. Castle**

/s/ **P. C. Carter**

/s/ **R. A. Carroll**

/s/ **D. S. Dugan**

/s/ **J. F. Mullen**