Award No. 10182
Docket No. PC-10819

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, 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 Conductors T. E. Nelson, C. S. Allen and M. E. King of the Chicago West District, who were operating regularly on C&NW trains 405 and 406 designated as line 345 between Chicago, Ill., and Minneapolis, Minn., that:

1. The Pullman Company violated a past practice that had been in effect for many years, when it unilaterally discontinued the sleeping quarters for the Conductors operating in line 345.

2. Claim is also made in behalf of the extra relief Conductors (to be determined by check of the records).

3. We now ask that Conductors Nelson, Allen and King, or Conductors who take their places, be reimbursed in the amount that they are required to pay for sleeping quarters in Minneapolis; same not to exceed $100.00 a month, until such time as the Company re-establishes sleeping quarters for Conductors in Minneapolis.

EMPLOYES' STATEMENT OF FACTS:

I.

For many years it has been the practice and custom of The Pullman Company to maintain sleeping quarters for Conductors who operated into Minneapolis and were required to lay over at that point.

On November 15, 1957 The Pullman Company discontinued the practice of providing sleeping quarters at Minneapolis.

There is no rule in the current Agreement that provides for sleeping quarters at away-from-home terminals. However, it has been a custom and practice to furnish sleeping quarters in Minneapolis. The Pullman Company presented an Exhibit before the President's Emergency Board created July 6, 1950, which outlined the points where sleeping quarters were maintained. Pages 9, 10 and 11 of the Company's Exhibit are attached as Exhibit No. 1.

". . . It is only when the language used is not clear, and creates an ambiguous situation, that practice thereunder by the parties is admissible for the purpose of determining just what it was they intended thereby."

In Third Division Award 6168, the Board stated:

". . . we have not overlooked certain cited instructions issued by the Company to the district offices and what is claimed has been the practice of the Company thereunder. But these instructions, which are not a part of any agreement, and the practice of the Carrier in accordance therewith created no rights which Claimant can have enforced. The Company could follow them if it desired but it was free to disregard them at any time it saw fit to do so and could do so without penalty."

In Third Division Award 6107, the Board stated:

"This Board must determine the rights under this contract from the four corners of the Agreement. Unless language expressly or impliedly authorizing payment as claimed here can be found in the Agreement itself, this Board cannot read into it such a meaning."

When the principles set forth in the above awards are applied to the case at hand, it is clear that the Company was privileged to discontinue sleeping accommodations at Minneapolis at its discretion and when it did so on November 15, 1958, the Organization had no valid cause for complaint.

CONCLUSION

The Company has shown in this ex parte submission that the Organization failed to comply with applicable time limits governing notice of appeal set forth in Rule 51 of the working Agreement, as a consequence of which the claim before the Board is barred. Also, the Company has shown that even if the claim were not barred, it would be invalid on its merits inasmuch as no rule of the working Agreement was violated and the Organization has premised its claim upon an erroneous conception of the meaning of past practice and what the "past practice" has been in the present case.

The claim is without merit and should be denied.

All data submitted herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

OPINION OF BOARD: The basis of this dispute is bottomed in the Carrier's unilateral discontinuance—for economy reasons—of conductor lay-over sleeping accommodations on November 15, 1957, at Minneapolis, Minnesota.

Organization's claim is not based on any rule of the current Agreement but on an existing practice of long duration.

The Organization contends that the Carrier has provided free sleeping accommodations for lay-over conductors at Minneapolis since 1919 and that the Carrier is not at liberty to discontinue unilaterally such a practice.

The Carrier maintains that it voluntarily provided sleeping accommoda-

tions for lay-over conductors at Minneapolis; that there is no rule in the current Agreement requiring Carrier to provide such accommodations; and that it did not violate past practice.

In support of its position the Organization cited First Division Award 12928, Second Division Award 1799 and Third Division Awards 507, 1257, 1397, 1435, 2436, 3727, 4104, 4493, 5167, 6168, 6929 and 8206.

Each of those Awards, supra, were objectively reviewed and it was found that none of them is factually related or identifiable with the instant case.

The cited Awards could be grouped as follows:

1. Violations of contractual provisions;
2. Violations of past practices that are referable to Agreement provisions and relate directly to work situations;
3. Violations of rigid or unyielding past practices.

In our particular case the record establishes there are:

1. No contractual violations;
2. No violations of past practices that relate to work situations.
3. No violations of **rigid** or **unyielding** past practices. (Emphasis ours.)

Only item 3, supra, needs an explanatory comment. In the instant case, the record undeniably establishes that the Carrier's practice of providing sleeping accommodations for lay-over conductors was not a rigid or unyielding practice. In fact, it was a fluid and changing practice determined by needs.

In many instances, according to the record, conductor sleeping accommodations were established and abolished by the Carrier without any claim from the Organization.

Furthermore, the Organization in 1949 proposed to the Carrier the introduction of the following rule into the Agreement:

> "**Expense Away-From-Home Terminal.** Conductors in road service (including deadhead and witness service) shall be paid an allowance of not less than five dollars per day for expenses, when away from home, for lodging accommodations and meals. This allowance to be adjusted per day on basis of elapsed time computed continuously from time of going on duty at the home terminal to the time of release from duty at said home terminal. The expense account allowance to be in addition to all other compensation earned during the tour or tours of duty."

After the Carrier rejected the proposed rule an Emergency Board also denied it. Therefore, this Board has no authority to grant a request that was denied both in negotiations between the parties and by an Emergency Board.

In Award 9316 (Johnson) this Board held:

> "These claims are in all essential respects identical with those involved in Awards 8123, 8257, 8691, 8836 and 9087, in that Claimants

demand as of contractual right a special privilege which (1) had been voluntarily granted, (2) had never become contractual, and (3) had been revoked by the Carrier. Since the privilege was never anything but voluntary and unilateral it always remained subject to revocation by unilateral action. Its revocation violated no contractual right and the Claim must be denied."

In Award 9606 (Schedler) this Board ruled:

"The Organization does not cite in the record any provision or rule in the Agreement which it claims the Carrier has violated. Instead it asserts that the Carrier is liable because established practice and working conditions on the lines of this Carrier provide sleeping accommodations at away-from-home terminals. The proof offered in the record completely fails to support any such assertion. The evidence discloses that neither by tradition nor by agreement is the Carrier bound to reimburse employes for the cost of providing sleeping accommodations at away-from-home terminals, and such payment is what the Claimants seek in this case."

It is difficult for this Board to see any merit in the Organization's position and, therefore, we must deny this claim.

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

Carrier did not violate past practice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 13th day of November, 1961.