

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, 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, herewith claims and contends that The Pullman Company violated the Agreement as outlined in Mr. J. P. Kenney's letter of June 8, 1954, addressed to General Chairman A. G. Wise, when:

1. Under date of July 19, 1958 The Pullman Company changed the relief in the conductor run on CB&Q trains 48 and 47, designated as line 125, from a one-man run with a relief after two round trips to a one-man run with a relief after six round trips.

2. Because of this violation, we ask that the following conductors of the St. Paul District be credited and paid for 1-1/2 days instead of 1-1/6 days for the following trips:

July 19, 1958	J. C. Hightower
July 20, 1958	J. Z. Freeman
July 21, 1958	E. C. Needles
July 22, 1958	M. E. Thomas
July 23, 1958	J. C. Hightower
July 24, 1958	S. S. Slagle
July 25, 1958	R. T. Raymond
July 26, 1958	R. T. Raymond
July 27, 1958	R. T. Raymond
July 28, 1958	R. O. Haynes
July 29, 1958	M. E. Thomas

3. We also ask that Conductor R. O. Haynes, effective July 30, 1958, be credited and paid for 1-1/2 days, for each trip he made up to and including September 2, 1958, instead of 1-1/6 days.

4. We further ask that Conductor Haynes be credited under Rule 24 for any work performed on layover days in accordance with the run being operated on the basis of 1-1/2 man assignment.

5. We also ask that Conductor Haynes be credited and paid under Rule 9, for hold-for-service time for any days he was on layover when he should have been working.

6. We further ask that Conductor E. C. Moletor, who displaced Conductor Haynes on September 3, be credited and paid on the basis of 1 1/2 days, for each trip that he made in the conductor run on CB&Q trains 47 and 48 designated as line 125, from September 3 until the run is changed back in accordance with the Rule, or until the run is discontinued, or until such time as Conductor Moletor is properly displaced from this run.

7. We also ask that Conductor Moletor be credited and paid under the provisions of Rule 24, for any work performed on his layover days had the run operated in accordance with the Letter of Understanding.

8. We further ask that Conductor Moletor be credited and paid under Rule 9, if he is on layover on days that he should be working had the run continued to be operated in accordance with the Rule, i.e., 1 1/2 man assignment.

9. Should Conductor Moletor be displaced, we ask that the conductor who displaces him in accordance with the Rules, be credited in like manner as Conductors Moletor and Haynes; the record to be checked to determine who this conductor would be.

EMPLOYES' STATEMENT OF FACTS:

I.

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

For reference and convenience of the Board, Rule 16, captioned Days Off Duty, is quoted:

Rule 16. Days Off Duty.

Not less than 96 hours off duty each month in 24-consecutive-hour periods, or multiples thereof, shall be allowed at the designated home terminal, which shall be the point where conductor's name appears on roster, except where, for convenience of the conductors, Management designates the opposite terminal and also except that where the home terminal of a run is at an outlying point, such point shall be considered the home terminal for the purpose of applying this Rule.

1934	12245	13825	15341
4068	12351	13968	15363
5886	12471	13973	15411
5887	12617	14086	15423
11248	12846,12847	14359	15424,15425
11253	12855	14566	15573
11439	12883	14577	15636-15642
11454	13076	14663	15684
11675	13092	14752	15760
11697-11700	13148	14910	15834
11819	13156	14924	15963,15964
11999	13201	14929,14930	15971
12000-12005	13332	14932	16113
12110	13537	14933,14934	16120
12116,12118	13639	15040	16217
12124	13747	15173	16302
12175	13782	15254	16342
			16632

CONCLUSION

In this ex parte submission the Company has shown that effective July 19, 1958, it properly changed Line 125 from a one-man run with a relief after two round trips to a one-man run with a relief after six round trips. Also the Company has shown that the rules of the Agreement between The Pullman Company and its conductors support the Company in this dispute and that there has been no violation of an alleged agreement as claimed. Additionally the Company has shown that awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim that conductors named in the claim should be credited and paid in the manner set forth in the claim; i.e., under Rules 9 and 24 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.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a controversy between the Order of Railway Conductors and Brakemen Pullman System and The Pullman Company.

This dispute is whether the Carrier violated the Agreement between said parties over a run from St. Paul to Minneapolis and return on Line 125 CB&Q Trains 47-48 in the matter of relief granted to the Conductor.

Boiled down, the real issue at stake is whether the Carrier violated Rules 5, 15 and 16 or whether there was a modification of these rules by virtue of a letter written to Mr. A. G. Wise, General Chairman, ORC&B Pullman System, by M. J. Kenney of the Carrier, which letter appears in the record at Page 8.

If the letter from Mr. Kenney was in fact a modification of the contract, then it is the position of the ORC&B Pullman System that such letter was in fact a change in policy agreed to by the Carrier through Mr. Kenney.

However, the Carrier says that such letter in no way violated the Agreement, and that the Organization has improperly interpreted Mr. Kenney's letter of June 8, 1954.

Certainly there is no evidence that there was any acceptance of any change in the original Agreement between the parties. We must decide one principal question in this case. Did the letter of June 4, 1954, written by Mr. J. P. Kenney, constitute any kind of Agreement between the parties? Frankly, when we dispose of that point we have disposed of the entire question before us. We do not, in all fairness, feel that this letter can be considered as any kind of an Agreement that would change the terms of the existing Agreement now in operation.

We held in Award 6291 that this Board is not authorized or permitted to revise or amend the governing rules of an Agreement. This can be done only by the parties to the Agreement. See Awards 5703; 2491; 4439; 6365; 4439; 5864; 5971; and 5977.

We feel that Award No. 9109, Third Division, is directly in point and because of its length we merely cite the Award and do not attempt to quote from it.

In Award No. 6168 we held, "Admittedly, Carrier has the right to make changes in Conductor operations at any time to meet changing conditions and the Conductors have no cause for complaint unless the change in some way violates a rule, or rules, of the Agreement.

Having held the letter of June 8, 1954, is not an Agreement, then we have no other questions to decide. We cannot find justification to so hold and, therefore, there was no violation of the Agreement in operation.

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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1961.