Award No. 10307
Docket No. PC-10856

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, 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 F. E. Dalton, Asheville Agency, that Rules 25, 38 and 64 of the Agreement between The Pullman Company and its Conductors were violated when:

1. On July 7, 1956 four (4) Pullman cars were permitted to lay over in Charlotte, N. C., without the services of a Pullman Conductor.

2. Because of this violation we now ask that Conductor Dalton be paid under the applicable rules of the Agreement, not less than a minimum day, 6:50 hours, for a deadhead trip Asheville to Charlotte; not less than 3:25 hours for station duty in Charlotte, and not less than 6:50 hours, a minimum day, for a deadhead trip Charlotte to Asheville.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties bearing the effective date of January 1, 1951, 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 ready reference and convenience of the Board, the most pertinent parts of the applicable rules which are directly connected to this dispute are quoted as follows:

"RULE 25. Basic Seniority Rights and Date. (a) The seniority of a conductor, which is understood in this agreement to mean his years of continuous service from the date last employed, shall

It is apparent from the above Award that the determination of whether or not conductors are entitled to assignment under Rule 64 to Pullman cars occupied by passengers at a given point depends upon whether the cars are part of a train and whether they are in service. In Award 4814, the Board found that the cars were in service but that they were not part of a train. The Board pointed out in particular that the cars could not be a part of train No. 108, which had carried the cars into Philadelphia, because that train had proceeded to its destination, New York. Similarly, in the instant dispute, the military cars could not be a part of a train since the "Augusta Special," which carried the cars into Charlotte, had proceeded to its desination and "The Peach Queen" had not yet arrived.

CONCLUSION

The Company has shown that Rule 64 is the only rule in the working Agreement which sets forth the conditions under which conductors are entitled to assignment and that this rule did not require Management to assign a conductor to the military cars in Charlotte as contended by the Organization. Further, the Company has shown that Award 4814 of the National Railroad Adjustment Board supports its position in this dispute.

The Company asserts that all data submitted herewith in support of its position have heretofore been submitted in substance to the employe or his representative and made a part of the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: There is no dispute between the parties concerning the following facts:

On July 7, 1956 four sleeping cars of a military movement known as Main No. 2685—for accounting purposes, enroute from Augusta to Fort Dix, arrived at Charlotte, North Carolina at 6:52 P. M. on Southern Train No. 32. The cars were cut out at Charlotte to await the arrival of Train No. 30 scheduled to arrive at 8:20 P. M. During this layover period the cars were without the services of a Conductor. The failure of the Carrier to provide a Conductor for these cars during the layover period constitutes the basis of the instant Claim.

Petitioner contends that this case is controlled by the award of this Division No. 3759.

In that award we said:

> "Opinion of Board. This case presents the correct interpretation and proper application of Rule 64 of the Agreement. * * * When we consider all of the facts of this particular case we are of the opinion that these five cars during all of the time they were in Denver constituted a part of a train within the meaning of Rule 64 (a) and that the Carrier was required to have a Conductor in charge during all of that time."

It is the contention of the Carrier that Award No. 4814 is controlling, we quote:

> "We have no difficulty in reaching the conclusion that the two Pullman cars at Philadelphia continued 'in service' until they were

vacated by the occupying passengers at or before 8:00 A. M. The train of which these cars had been a part, on and before their arrival at Philadelphia, had proceeded on to its destination which was New York. These cars had been dropped from the train at the 30th Street Station. Their subsequent movement to the Broad Street Station did not consitute a train or part of a train within the meaning of the Rule as it has been interpreted."

In this case, the cars were in service and were occupied by passengers and their belongings. In Award No. 3759, as in this case, the cars were cut out and laying over prior to continuation of their journey to final destination. In both cases the cars were parts of a train to which they would later be attached.

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 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 Pullman Company violated Rule 64 of the Agreement.

AWARD

Claim Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1962.

DISSENT TO AWARD NO. 10307, DOCKET NO. PC-10856

Award 10307, in quoting from the Opinion of Board in Award 3759, substituted asterisks for the following basic premise which this Division held under Rule 64 (a) was determinative of the issue therein:

> "If these cars were a train or part of a train **while they were in Denver** the Carrier was required to have a conductor with them." (Emphasis added)

In the case covered by Award 3759, the cars were part of the "Exposition Flyer" destination to Chicago during the time "while they were in Denver", which was a terminal where Pullman conductors changed off. In the instant case, the cars were no part of any train "while they were in Charlotte" and Charlotte was not a terminal at which conductors either changed off or were located. The train on which the cars arrived at Charlotte had departed and the train to which the cars were to be attached for movement to destination

had not yet arrived; there was no train at Charlotte of which the cars could have been a part during the time for which pay was claimed at that point.

Based upon the condition precedent which this Division held was controlling in Award 3759, as well as in Award 4814, the instant claim should have been denied.

For the reasons shown, among others, Award 10307 is in error and we dissent.

/s/ W. H. Castle

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ D. S. Dugan

/s/ T. F. Strunck

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 10307, DOCKET PC-10856

The Carrier Members' dissent to Award No. 10307 is merely a repetition of their contentions during panel arguments, which arguments were rejected by the majority. Their contentions are no more persuasive now than they were then.

It is unrefuted in the record that the Carrier proposed a Rule which would relieve it of the necessity of assigning a conductor to a car or cars, during a period of layover enroute, which proposal was denied by Emergency Board No. 89. The Carrier's proposal was, in pertinent part, as follows:

> "Rule 64 — (f) . . . The Management shall have the option of assigning a conductor to a car or cars occupied by passengers or their baggage while laying over enroute at either a passing point or at an outlying point. . . .
>
> "Q-4. Under this rule shall it be considered a combined service movement when two or more sleeping cars are parked together for occupancy at either a 'passing point' or an 'outlying point'?
>
> "A-4. No. Such cars are not in road service.
>
> "Q-5. Under this rule shall it be considered a combined road service movement when two or more sleeping cars are switched from one train to another train or from one station to another station at either a 'passing point' or an 'outlying point'?
>
> "A-5. No. Such cars are not in road service."

In defending its position in support of the proposed amendment to Rule 64 (f) supra, it stated:

> **"Under the present rule** conductors **must be kept on duty after arrival of trains at their destination until cars are vacated, and con-**

ductors must be assigned to two or more cars in service parked enroute (coupled together)." (pp. 4166-4167 Tr.) (Emphasis supplied.)

Emergency Board No. 89, after prolonged and intensive investigation of the Rule in dispute, said:

> "The present rule, as interpreted by the National Railroad Adjustment Board in the light of particular circumstances, appears to deal with the situation on a reasonable and equitable basis."

The Board recommended that the Company's proposal, with respect to the assignment of conductors to cars parked at terminals or enroute, be withdrawn. (P. 59, E.B. 89 Report.)

Thus it is clearly apparent that the Carrier has recognized, over a period of years, that the current rules of the Agreement require that conductors must be assigned to the conductor work involved when cars are laying over enroute, pending further movement. (Awards 3759, 6475.)

The Award is correct and in accord with the facts of record and the governing Rule of the Agreement.

H. C. Kohler
Labor Member

REPLY TO LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 10307, DOCKET PC-10856

The Labor Member's Answer, supra, emphasizes that even the Emergency Board found that our previous interpretation of the present rule, which made **being a part of a train** controlling over the requirement for the services of a conductor on cars laying over at other than their destination, "appears to deal with the situation on a reasonable and equitable basis" and so confirms the propriety of Carrier Members' Dissent to Award 10307.

/s/ W. H. Castle
/s/ P. C. Carter
/s/ R. A. Carroll
/s/ D. S. Dugan
/s/ T. F. Strunck

LABOR MEMBERS ANSWER TO CARRIER MEMBERS REPLY TO LABOR MEMBERS ANSWER TO CARRIER MEMBERS DISSENT AWARD 10307 DOCKET PC 10856

The Dissenters are either confused or are deliberately misrepresenting the facts.

We held in Award 3759 that under Rule 64(a) the determinative issue therein was:

> "If these cars were a train or a part of a train while they were in Denver the Carrier was required to have a conductor with them.

"The mere fact that engines were changed could not be material. Nor would it be material that a different Railroad Company took up the operation of the train at this point.

"No one would contend that the fact that a train is stopped for any reason for the period of 5½ hours at an intermediate point on its trip would of itself take the train out of Rule 64 for the period while stopped. . . .

". . . The Carrier also emphasizes the fact that the movement of these cars during the time in question was by switch engines. This would not keep these cars from being a part of a train. . . .

". . . When we consider all of the facts of this particular case we are of the opinion that these five cars during all of the time they were in Denver constituted a part of a train within the meaning of Rule 64(a) and that the Carrier was required to have a conductor in charge during all of that time."

Award 3759 Supra, correctly held, as did the Carrier in its position before Emergency Board No. 89, that:

"Under the present rule conductors must be kept on duty after arrival of train at their destination until cars are vacated, and conductors must be assigned to two or more cars in service parked enroute. (Coupled together)."

Thus it is crystal clear that the Carrier, as well as the employes, understand the intent of Rule 64 as interpreted in our Award 3759 Supra. E. B. No. 89 held that this interpretation "Appears to deal with the situation on a reasonable and equitable basis."

We need no citation of authority holding that agreements are made to be kept and when, as here, the rights of the Employes are prejudiced by their violation, it is the function of this Board to award the relief required.

H. C. Kohler
Labor Member