Award No. 10444
Docket No. PC-11103

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, contends that The Pullman Company violated Rules 47, 66, 33, and 25 of the Agreement between The Pullman Company and its Conductors, when:

1. On April 27, 1958, the Company reallocated the Richmond District Conductor run between Charlottesville, Va., and Detroit, Mich., on C&O trains 47 and 46 designated as line 6288, to the Columbus Agency for Conductor operation.

2. We now ask that Conductors P. W. Keith, Scott Randle, S. B. Baker, R. C. Davis, and F. E. Crawley of the Richmond District, (or any other Richmond District Conductor who would be entitled to a regular assignment on the above trains, under the applicable rules of the Agreement) who prior to April 27, 1958 were regularly assigned to C&O trains 47 and 46 designated as line 6288, be credited and paid for each trip they are denied the right to perform the work on C&O trains 47 and 46, designated as line 6288 between Charlottesville and Detroit.

3. We also ask that the extra Richmond District Conductors entitled to perform the relief work, be credited and paid for each trip they are denied the right to perform such work.

4. We ask that these payments be made in accordance with the Memorandum of Understanding Concerning Compensation for Wage Loss, found on page 99 of the current Agreement.

Rule 31 is also involved.

EMPLOYES' STATEMENT OF FACTS: On April 27, 1958, the Richmond District Conductor run on C&O trains 47 and 46 designated as line 6288, which operated between Richmond, Va., and Detroit, Mich., was shortened to operate between Charlottesville, Va., and Detroit. Also, on April 27, the Company reallocated the Conductor run on C&O trains 47 and 46 between Charlottesville and Detroit, away from the Richmond District to the Columbus Agency, without conference and agreement as provided in Rules 47 and 66 of the Agreement between The Pullman Company and its Conductors.

Rule 47 reads as follows:

cited by the Organization were violated and that Awards 3830, 4647, 6472, 6476, 6631 and 6653 support Management's position that a run should be assigned to a district which is either a terminal district or intermediate district of the run.

The Organization's claim in behalf of Richmond District Conductor P. W. Keith, et al. 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 dispute between the Order of Railway Conductors and Brakemen and the Pullman Company.

Prior to April 27, 1958, a conductor assignment operated on trains 5-47 and 4-46 between Richmond, Virginia and Detroit, Michigan, designated as Line 6288. Conductors from Carrier's Richmond District were assigned to this run.

Effective April 27, 1958, one of the terminals for Line 6288 was changed from Richmond to Charlottesville, and the Carrier abolished the Richmond run and established a run between Detroit and Charlottesville.

It is the position of the Petitioner that when the Conductor run on the above trains was shortened to operate between Charlottesville and Detroit, instead of Richmond and Detroit, that the remainder of the run from Charlottesville to Detroit was not new service, but was the same service that had been in operation; that under the provisions of point 1 of Rule 33, it was necessary for the Company to rebulletin the run in the Richmond District and that the Richmond Conductors should have been permitted to continue to operate the run. The Petitioner maintains Rules 47, 66, 33 and 25 have been violated and that Rule 31 is also involved.

Rule 47 is concerned with consultation and agreement between the parties when there is the reallocation of an **existing** run from one district or agency to another. Since the run formerly handled by Richmond conductors was discontinued on April 27, 1958, it obviously was not a proper subject for reallocation as the run no longer operated into the Richmond District. Rule 66 concerns itself with the Book of Maps of May 16, 1949, and requires conference and agreement before any revision can be made thereto. The record does not support the Petitioner's citation of this rule to the effect that Richmond District seniority has in any way been altered. Rule 66 clearly has nothing to do with changes in the operation of regular runs, which is our concern here.

Rule 33, relied upon by the Petitioner, provides that runs that are changed in certain respects specified in the rule are to be bulletined as provided in Rule 31, the bulletining rule. Rule 33 would apply if the home district Richmond remained a terminal of the run. The record shows the Respondent bulletined the new run in the Columbus Agency in accordance with Rule 31, which contemplates the bulletining of new runs as well as the rebulletining of changed runs. It seems clear the Respondent complied with the bulletining rule. Rule 25 is concerned with the right of conductors in a district to perform the conductor work belonging to them. The record shows indisputably in this case that the work in the new run did not arise on the Richmond roster

and the rights of the Columbus Agency conductors would have been violated if the Company had bulletined the run in the Richmond District.

It is the position of the Respondent that when the terminals of the run (trains 46 and 47) were changed from Richmond-Detroit to Charlottesville-Detroit, Rule 46 required that Columbus Conductors be assigned to the new run; that Richmond District was not entitled to furnish Conductors for the run after April 27, 1958, because Richmond District ceased to be a "district involved" in the run as required by Rule 46. Further, there is an essential distinction between a former run which terminated at two districts and a **new run** which terminates at any outlying point of one district and has the other terminal in another district.

The new run passed through Columbus, an intermediate district; therefore, Columbus conductors had to be considered in the assignment of the new run.

This dispute is whether a run should remain assigned to a District when the terminals of the run are changed to the extent that it no longer operates into or through the District. It is common practice to give words their common ordinary meaning in interpreting agreement rules and we have a number of awards that sustain this position.

Also in Webster's Dictionary we find the definition of the word "new" as follows: (1. Having existed or having been made but a short time; recent; modern; — opposed to old. 2. Recently manifested, recognized or experienced).

Therefore, there could be little or no question that this was a new run and is not a "re-allocated;" and since it is a new run we must apply an entirely different rule than we would if it were "re-allocated" and we so hold.

The issue of whether a district is entitled to operate a run which does not operate into that district but merely operates to an outlying point thereof was considered by this Board in a previous case. In denial Award 8682 it is noted the same Petitioner as here argued that the shortening of a run which eliminated the home district did not make the remaining portion of the run new service. It was the opinion of the Board in that case that because the new run was between outlying points that the Respondent had correctly relied upon Rule 48. Here terminal districts are involved, and the Respondent correctly relied upon Rule 46.

We think a **new run** was created when the terminals of the run were changed from Richmond-Detroit, because the run no longer operated into the Richmond District, which formerly had the conductor operation. Rule 46 reads in pertinent part as follows:

> "Rule 46. Assignment of Runs to Districts.
>
> "In the establishment of new service, the seniority of the extra conductors in the districts involved shall determine which district shall furnish conductors for this service.
>
> "Q-1. What is meant by 'districts involved' as used in this rule?
>
> "A-1. The terminal districts and intermediate districts (passing points) through which the run operates and at which points there are scheduled passenger stops."

We can find nothing in Rule 46, which gives to the Respondent the managerial prerogative of determining which district shall get the run. That is determined by the seniority of the conductors in the **districts involved,** as per Rule 46. In the instant case, Detroit and Columbus were the only districts involved because Richmond was not a point at which there were "scheduled passenger stops" as defined in Answer 1 of Rule 46, and Columbus District had the senior Conductors and was assigned the run.

We have reviewed Awards 3830, 4647, 6472, 6631 and 6653, cited by the Petitioner, which deal with runs operating out of home terminal districts. In each of the awards the situation was sharply distinct from that represented in this dispute. Without exception in the cited Awards the district or agency finally awarded a run was the intermediate or terminal district of the run. In no instance was the run in question awarded to a district on the basis that the new run operated to an outlying point of a district previously the home terminal of a run. Thus, we do not find the awards cited by the Petitioner applicable in this case. On the other hand, Award 8682 supports the Respondent's position that the shortened run was **new service** and that the run was properly assigned under Rule 46.

We conclude that the Charlottesville-Detroit run was properly assigned by the Respondent to the Columbus Agency conductors in accordance with the provisions of Rule 46.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1962.

LABOR MEMBERS' DISSENT
TO
AWARD 10444
IN
DOCKET NO. PC 11103

PRESENTED BY R. H. HACK

The majority has grossly erred in the adjudication of this dispute and for this reason a dissent must be registered.

This dispute involves the work on Line 6288 on Trains C&O 47 and 46. Prior to April 27, 1958, the regularly assigned conductors to the run in this line were assigned to this run in accordance with Rule 46 since the time of its establishment as comprehended by Rule 46 which provides:

"In the establishment of new service, . . . "

This run in line 6288 was assigned to the Richmond District conductors for many many years, or in other words, ever since such line was originated as "new service".

It is significant to note that the claim itself makes reference ONLY to Trains 5-47 and 4-46. Petitioner has contended that Trains 5 and 4 are not involved in this dispute and yet the majority chooses to persist in using the wording of respondent even in attempting to state factual information.

Page 2 of the award states:

"Effective April 27, 1958, one of the terminals for line 6288 was changed from Richmond to Charlottesville, **and the Carrier abolished the Richmond run** and established a run between Detroit and Charlottesville." (Emphasis ours.)

It must be noted that herein lies a violation of the effective agreement particularly in view of the wording itself from Respondent's own statement of facts which state: (Pages 41 and 42 of the Record)

"The Chesapeake & Ohio Railway Company advised The Pullman Company that effective April 27, 1958, **the following changes** in sleeping car operations on C & O train 5-47 would occur:

1. The **terminals of Line 6288 would change** from Richmond-Detroit to Charlottesville-Detroit.
2. **Line 6298** would be **discontinued.**
3. **Line 6274** would be **discontinued.**
4. **Line 6292,** Huntington-Detroit would be **added.**

"The Chesapeake & Ohio Railway Company also advised that effective the same date the **following changes** in sleeping car operations on C & O train 4-46 would occur:

1. The **terminals of Line 6278 would change** from Chicago-Newport News to Chicago-Charlottesville.
2. The **terminals of Line 6288 would change** from Detroit-Richmond to Detroit-Charlottesville.
3. The **terminals of Line 6292 would change** from Detroit-Hinton to Detroit-Huntington."
(Emphasis ours.)

It is clear, and the majority has completely ignored this fact, that the C & O RR Co. issued instructions to **change terminals** of Line 6288 and not to discontinue this Line. A change of terminals is covered unambiguously by Rule 33 in the case of an existing run, which this most certainly was. These instructions did call for **discontinuance** of Lines 6298 and 6274 but **only** these **lines.**

The majority has overlooked completely the fact that The Pullman Company arbitrarily and unilaterally (without conference with Organization, in compliance with Rule 66 and 47) went beyond the request of the C & O RR for a change in terminals and did in fact **discontinue** a run and establish a so-called new run which was in reality a shortening of the existing run. This is evidenced by **Respondent's own** recitation of facts at Page 42 of the record which states:

> "When the **above described changes** became effective on April 27, 1958, a Pullman conductor requirement on C & O trains 5-47 and 4-46 arose between Detroit and Charlottesville inasmuch as Pullman service east of Charlottesville was **discontinued** on both trains. The Richmond District run on C & O trains 5-47 and 4-46 between Richmond and Detroit **was discontinued. A new run** was established on those trains between Detroit and Charlottesville." (Emphasis ours.)

The Pullman Company clearly violated Rule 33 and the majority has condoned such action by denial award.

Respondent has no right under the contractual agreement to unilaterally **abolish** a run and establish a new run or create new service, when a remainder of the former run continues to operate into a district which formerly had jurisdiction, albeit such new terminal is not at the **district office** wherein the seniority rosters are posted. To place such an interpretation upon the definition of a district does a grave injustice to the correct interpretation of what constitutes **a district.** A district is not merely the place where the seniority roster is posted (in this case Richmond) but rather a district, or agency is clearly defined in Rule 66 which makes reference to a Book of Maps which defines the limitations of each district on each railroad and equally as clearly prevents any point (even an outlying point such as Charlottesville) from being removed unilaterally from that Book of Maps or from being considered not a part of the district or agency as shown in the Book of Maps **unless by bilateral action.** Such action was not taken in the instant case.

Petitioner has enumerated violations of Rule 47, 66, 33, 31 and 25, but the majority has totally ignored all of these Rules and has instead seized upon only Rule 46, which respondent has injected into this dispute for a self-serving purpose. The entire opinion of the majority is an attempted justification of respondent's injection of this rule into the dispute for the purpose of obtaining by denial award a change in the past interpretations of what constitutes "new service" as has been previously adjudicated by Awards 3830, 4647, 6473, 6476, 6631 and 6653. The majority by this award has conveniently overturned all of these awards by stating (Page 4) that:

> "Without exception in the cited Awards the district or agency finally awarded a run was the intermediate or terminal district of the run. In no instance was the run in question awarded to a district on the basis that the new run operated to an outlying point of a district previously the home terminal of a run. Thus, we do not find the awards cited by the Petitioner applicable in this case."

The proposed award in the instant case has failed to take cognizance of basic seniority rights of employes established in conformity with the rules of the Agreement and previously correctly interpreted by this Board. This Board has consistently held that Carriers are prohibited from **unilaterally** transferring work from either one class of employes to another or from transferring work among members of the same class from one seniority

district to another unless and until such transfer is made in accordance with the rules of the Agreement providing therefor. (The instant Agreement provides for consultation and agreement with the General Chairman, which was not done.)

Not only does this Award erroneously deny to the Richmond District Conductors their right to the performance of work in their own seniority district albeit such work is at an outlying point (Charlottesville) but the Award also clearly grants to Respondent a change of the rules which they were unable to accomplish through negotiations.

The record discloses that the majority's attention was repeatedly called to the fact that Awards 3830, 4647, 6473, 6476, 6631 and 6653 had clearly established the principle of the determination of "new service" and that Respondent had attempted to have Emergency Board No. 89 overturn this determination. This was unsuccessful in negotiations by the Respondent. This Award, however, summarily dismisses this determination and grants to Respondent that which they attempted and failed to get under Emergency Board #89 when (as described by Mr. Boeckleman) they stated:

> "Under the Company's proposal, in an extension or shortening of a conductor run, the entire conductor operation, including any part of the run previously operated, shall be treated as a new run."

The instant case involves a run of 665 miles between Richmond and Detroit, which is shortened by 97 miles to operate between Charlottesville and Detroit. Respondent and the majority, ignoring all logic and reason, construe the resulting 568 miles as being "new" rather than "shortened".

Petitioner has urged: (Page 99 of the Record)

> "Charlottesville is under the jurisdiction of the Richmond District. Therefore, the run operated into the Richmond District as it operated into Charlottesville, an outlying point under the jurisdiction of the Richmond District."

Page 8 of Labor Member's brief urged:

> "Here Carrier admits that the **terminals are changed** which clearly brings Rule 47 into control. Particularly in view of the fact that the run **did** continue to operate **into** the district (Charlottesville, which is in the Richmond District)." (Emphasis ours.)

And further Labor Member's continued urging, (Page 5 of Labor Member's requested reargument) wherein is stated:

> "The Referee has erred in the opinion in stating as a fact an excerpt from Carrier's submission which is not a fact.
>
> "At Page 2 the opinion states:
>
> > 'This dispute is whether a run should remain assigned to a District when the terminals of the run are **changed to the extent that it no longer operates into or through the District.**' (Emphasis ours.)
>
> "This language has been taken from Carrier's submission Page 44 and Petitioner avers is not a **proven** fact.
>
> "Not only was it erroneous when Carrier stated it as pointed out in Labor Member's Brief Page 8. But it is even more erroneous and damaging when stated in the opinion of the Award.

"This is not the dispute, because the same run (shortened) does operate INTO the Richmond District (Charlottesville).

"The run here in question has **not** been: 'changed' to the extent that it no longer operates **into** or **through** the District.

"Richmond District does not consist ONLY of Richmond.

"There can be no doubt that Charlottesville is **IN** the Richmond District. Rule 66—Book of Maps proves this."

" . . .

"The Referee has taken Carrier's language and permitted it to confuse him as to what constitutes a District." (Emphasis ours.)

Despite all of these urgings, completely and arbitrarily ignored by the majority, the Referee has continued to persist in defining the dispute in Respondent's **verbatim** language when at Page 3 of the Award is again erroneously stated: (as Carrier stated Page 44)

"This dispute is whether a run should remain assigned to a District when the terminals of the run are changed to the extent that it no longer operates into or through the District."

The use of this language clearly indicates that the majority was unable to clearly ascertain the correct issue and hence proceeded to adjudicate the claim based upon an interpretation of Rule 46 which was injected into the dispute for Respondent's self-serving purpose and is clearly inapplicable.

The majority has completely ignored the issue to be resolved, which is clearly as stated by Labor Member (Page 4 of Brief) as follows:

"The entire dispute revolves around the question of whether Rule 46 standing alone is controlling, as Carrier contends, or whether Rules 47, 66, 33 and 25 are controlling, as Petitioner contends:"

The majority states Page 4 that:

"On the other hand, Award 8682 supports the Respondent's position that the shortened run was **new service** and that the run was properly assigned under Rule 46."

This language further exhibits the confusion of the majority in declaring the run **both** "shortened" and "new". Either the run was shortened bringing Rule 33 into play, or it was "new" bringing Rule 46 into play. The record is abundantly clear that the run is a "shortened" run and not a "new" run.

It must be further noted that Award 8682 (solely upon which the majority base their conclusions), differs materially from the instant dispute.

Rightfully Award 8682 should be concerned with Rule 46 and a determination therof. The claim in that case reads in part as follows:

"1. Rule 46, Question and Answer 5 of the Agreement between The Pullman Company and its Conductors was violated by the Company . . . when the Company failed to permit Denver District Conductors to operate the **reestablished** run on Santa Fe Trains 123-124 between La Junta and Los Angeles."

That was a claim for violation of a specific provision of Rule 46 (Q & A 5) concerning a reestablished run. No violation of Rule 46 is here claimed nor is this a question of a reestablished run but rather an **existing** run.

There is no relation whatsoever between the dispute in Award 8682 and the instant dispute and yet the majority relies mainly upon the findings of that Award and dismisses the findings of Awards 3830, 4647, 6472, 6476, 6631 and 6653.

The majority has ignored completely the unrepudiated statement of Petitioner at Page 35 of the record which states:

> "Your Petitioner challenges the Company to deny that if an extra service trip arose out of Charlottesville, that it (Company) would not assign an extra Richmond District Conductor to the movement, unless a foreign district Conductor was in the Richmond District and he could be used on a direct route to his home station, as provided in Rule 38(e)."

Thus it is clearly seen that while Charlottesville is **in** the Richmond District so far as operation of extra conductors under Rule 38 is concerned, this palpably erroneous Award removes Charlottesville **from** the Richmond District for regular conductors in the application of Rules 47, 66, 33 and 25. This reasoning is clearly contrary to the rights and obligations of this Board —to uphold the sanctity of Agreements.

In the instant claim Rule 25 has been violated because the **regular** Richmond District Conductors have been deprived of the work to which they are entitled in accordance with their seniority and which work they had previously performed for many years on a 665 mile run but are now deprived of the same work because the run is 97 miles less and does continue into the District, albeit such locality, Charlottesville is an outlying point.

Rule 33 has been violated because the run in question should have been rebulletined in the Richmond District when **only** a change in terminal was made from Richmond to Charlottesville (both in the Richmond District.).

Rule 66 has been violated because under this erroneous interpretation, Charlottesville while in the Richmond District for purposes of Rule 38 (Extra men) is forthwith removed from Richmond District for purposes of Rule 33 (Regular men) which constitutes a change in the Book of Maps without the required agreement.

Rule 47 was violated by **reallocation** of the run from the Richmond District to the Columbus Agency without consultation or agreement with the General Chairman.

This Award completely ignores any and all of the aforequoted rules violations and instead devotes itself to a determination of Rule 46 alone. This rule was not a part of the claimed violation and has been injected here for Respondent's self-serving purpose of obtaining by a Denial Award that which they have previously been unable to obtain in six prior Awards and in negotiations on the property, a change in the rules.

For these reasons I most heartily dissent to this Award which ignores the basic issue at dispute and has the effect of declaring, without reason, the inapplicability of prior awards on the subject of "new service" and which provides Respondent a change in rules which they were unable to obtain under the proper provisions of the Railway Labor Act.

R. H. HACK