

**Award No. 10549**

**Docket No. PC-10346**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION  
(Supplemental)**

**J. Harvey Daly, Referee**

**PARTIES TO DISPUTE:**

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** The Order of Railway Conductors and Brakemen claims for and in behalf of Conductor R. E. Michau that Rules 9, 24, 35, and 52 of the Agreement, effective January 1, 1951, between The Milwaukee Road and its Parlor Car Conductors were violated when:

1. Under date of October 10, 1957, a person holding no seniority as a Parlor Car Conductor was permitted to lift (collect) parlor car tickets in the Union Station, Chicago, for Parlor Car No. P-30 that operates on train 3-15.

2. We now ask that Conductor R. E. Michau, who was entitled to this work, be credited and paid under the provisions of Rule 9, for not less than 3:25 hours because of this violation.

**EMPLOYEES' STATEMENT OF FACTS:**

**I.**

There is an Agreement between the parties, bearing the effective date of January 1, 1951, 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.

**II.**

On October 10, 1957, Milwaukee Train Conductor E. C. Holden, while lifting rail transportation for train 3-15 at a table in the Union Station, Chicago, at the same time also lifted tickets for parlor car P30, line 115, thereby violating Rules 24, 35, and 52 of the Agreement between The Milwaukee Road and its Parlor Car Conductors. This occurrence is verified by the following statement given by Train Conductor Holden to Local Chairman R. E. Michau:

"On October 10, 11, 12 and 13, I was the Train Conductor assigned to Milwaukee train 3-15 between Chicago and Milwaukee. On these dates, while lifting rail transportation at the desk in the Union

as that question is related to the one involved in this dispute, we should like to ask that the Carrier's initial submission and reply in Docket PC-10210, by reference thereto, be made a part of the docket in this case.

The Carrier submits that Rule 52 of the agreement effective January 1, 1951 specifically provides that on all trains carrying only one Milwaukee parlor car in service, the Carrier need not use a parlor car conductor on that train.

In the instant dispute there was, as usual, only one parlor car in service on Train No. 15 and same was operated with porter-in-charge or, in other words, without the services of a parlor car conductor as provided for in Rule 52.

Also in accordance with Rule 52, porters-in-charge may collect parlor car transportation and in the instant case the porter-in-charge picked up parlor car transportation from passengers in that car enroute and could have and would have picked up any parlor car transportation which it is alleged was picked up by the train conductor at the reservation table in the Chicago Union Station had not the train conductor elected to do so.

It should be pointed out that there have been no instructions issued relative to train conductors collecting parlor car transportation for the one parlor car on Train No. 15 at the reservation table in the Chicago Union Station and there was no occasion for the train conductor to do so in the instant case and had he not done so it would have been properly taken care of by the porter-in-charge which is a proper procedure. A conductor, by his own actions, cannot properly create a condition making the Carrier subject to claim in behalf of another conductor.

The fact remains, however, that there is, and was on the date of the claim, i.e. October 10, 1957, only one parlor car in service on Train No. 15 and in view thereof and in accordance with Rule 52 the Carrier is not obligated to provide a parlor car conductor in connection therewith.

Therefore, under the rules and prevailing circumstances it cannot be said a parlor car conductor should have been assigned to Train No. 15 in the instant case nor can there be any claim for payment in behalf of a parlor car conductor. In other words, there exists under the rules no basis for this claim and the Carrier respectfully requests it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The basis for this claim lies in the alleged improper lifting of parlor car tickets—for Parlor Car P-30 on Train 15—by Train Conductor E. C. Holden on October 10, 1957 at a reservation table in Chicago's Union Station.

Mr. Holden admitted that he picked up the tickets in question. Accordingly, the Organization contends that the Carrier violated Rules 9, 24, 35 and 52 of the controlling Agreement dated January 1, 1951.

The record indicates that there was only one parlor car in service on Train No. 15 on October 10, 1957, and that a porter-in-charge, in keeping with the provisions of Rule 52, was properly in charge of that car. The record also indicates that it was the function of the porter-in-charge to pick up the parlor

car tickets of passengers in Car P-30. Consequently, Train Conductor Holden's act was not only unauthorized but also improper.

The Carrier had never instructed Train Conductor Holden to pick up parlor car tickets. Furthermore, such work was outside the scope of Holden's job duties. To hold the Carrier responsible for Holden's voluntary, unauthorized act would be to place the Carrier in an indefensible position and subject it to absurd and limitless claims.

Until two parlor cars were in operation on Train No. 15 the Claimant had no rights. Accordingly, we must hold that the Carrier did not violate the Agreement and dismiss the 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 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; and

That the Carrier did not violate the Agreement.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

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