

Award No. 10578

Docket No. PC-10954

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, 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, files a claim for and in behalf of Conductors J. H. Hapeman and E. E. Payton of the Omaha District, in which the Organization contends that The Pullman Company violated the Memorandum of Understanding Regarding Conductor and Optional Assignments, found on pages 83 and 84 of the current Agreement, as well as Rules 25 and 64, when:

1. Under date of July 15, 1958 Conductors of the Omaha District were removed from the conductor run on CB&Q trains 43 and 42 between Alliance, Nebraska, and Billings, Montana.

2. Because of this violation the Organization now asks that Conductors J. H. Hapeman and E. E. Payton, who were regularly assigned to this run, be credited and paid in accordance with the Memorandum of Understanding Concerning Compensation for Wage Loss, for each trip that they are denied the right to operate in the assignment they were entitled to, in accordance with their seniority.

3. The Organization further requests that the extra Conductors of the Omaha District (record to be checked to determine which conductors) who are entitled to perform the relief work in the conductor operation on the above-mentioned trains, subsequent to July 15, 1958, be credited and paid for each trip they are denied the right to fill the relief in the above run.

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 ready reference and convenience of the Board, the most pertinent parts of Rules which are directly applicable to the dispute are quoted as follows:

tinued on July 15, 1958, was not a "frozen" operation covered by the Memorandum of Understanding Regarding Conductor and Optional Assignments. Finally, the Company has shown that it did not violate Rules 25, 64, or any other rule of the working Agreement.

The claim is without merit and should be denied.

All data presented herein in support of the Company's position have heretofore been presented in substance to the employees or their representatives and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The record has been reviewed by the parties in hearing before the Board, with the Referee present. There is no dispute between the parties as to the facts from which the claim arises. Neither is there any dispute between the parties as to the issue involved and which this Board is called upon to adjudicate.

The instant claim arose when, on July 15, 1958, the Carrier removed the Claimant Conductors from the conductor run on CB&Q Trains 43 and 42 between Alliance, Neb., and Billings, Mont., the Employees contending that by this unilateral action by the Carrier Rule 64 and the Memorandum of Understanding Regarding Conductor and Optional Assignments were involved.

Rule 64 and the Memorandum referred to supra, were executed on August 8, 1945, re-executed on December 29, 1950 and again on September 21, 1957. The pertinent parts are repeated here:

"RULE 64. (b) Management shall have the option of operating conductors, porters in charge, or attendants in charge, interchangeably, from time to time, on all trains carrying one Pullman car, either sleeping or parlor, in service; except with respect to certain conductor operations as specifically covered in the Memorandum of Understanding Regarding Conductor and Optional Assignments re-executed at Chicago, Illinois, September 21, 1957.

"Memorandum of Understanding Regarding Conductor and Optional Assignments.

"In the application of Rule 64, entitled 'Conductor and Optional Operations,' as contained in the Agreement, effective September 21, 1957, it is understood and agreed by and between The Pullman Company and its conductors, represented by the Order of Railway Conductors and Brakemen, that the one Pullman car runs listed in Appendix A, attached hereto and made a part hereof, shall continue to be operated in charge of conductors for as long as such runs remain in existence. Should any such run be discontinued and subsequently restored it shall be a conductor operation.

"It is further understood and agreed that any round-trip run consisting of only one car which was operated by conductors as of April 23, 1945, if inadvertently omitted from Appendix A, shall be listed thereon and shall be considered included in this Memorandum of Understanding.

"It is further understood and agreed that all runs listed in Appendix B, attached hereto and made a part hereof, shall likewise continue to be operated in charge of conductors for as long as such runs remain in existence. Should any such run be discontinued and subsequently restored it shall be a conductor operation.

"It is further understood and agreed that any run listed in either Appendix A or B shall continue to be operated by conductors between the new terminals if the line is shortened. If any run so listed is lengthened it shall continue as a conductor operation at least between the terminals to which conductors operated at the time the run was lengthened.

"Any one Pullman car run of a seasonal character which was operated by conductors during 1944 shall be operated by conductors when seasonally resumed.

"Re-executed at Chicago, Illinois, this 21st day of September, 1957."

Appendix B attached to said "Memorandum of Understanding Regarding Conductors and Optional Assignments" insofar as pertinent here, on page 88 of Agreement reads as follows:

"APPENDIX B

Runs in Which Conductors Operate in Charge of but One Car for a Portion of a Trip

Line No.	Points between Which Conductors Operate	Trains
160	Kansas City-Billings-Lincoln	C.B.&Q. 43, 42, 44

Organization further claims that this is a dispute over a conductor run which it claims has been established for many years.

". . . The run originally established prior to September 1, 1945, the effective date of the Memorandum, operated between Kansas City and Billings on CB&Q Train 43, westbound, via Lincoln, Nebraska; the Kansas City conductors handling cars designated as Line No. 160, operating between Kansas City and Alliance; Line 161 operating between Omaha and Billings, and Line 115 operating between Omaha and Casper, Wyoming.

"It is noted here that he handled one car, the Kansas City to Alliance car, Line 160, between Kansas City and Lincoln, at which point he picked up the Omaha to Billings car and the Omaha to Casper car. On arrival at Alliance, an intermediate point, the Alliance car, Line 160, terminated; the Casper car, Line 115, operated porter-in-charge from Alliance to Casper, and the conductor proceeded on Train 43 handling the Billings car, Line 161, to Billings. (p. 31).

"On the return trip from Billings to Kansas City, the conductors were assigned to Trains 42 and 44. The conductor operated between Billings and Lincoln on Train 42, handling the Billings to Omaha car, Billings to Lincoln; at Alliance, the Casper-Omaha car was attached

to Train 42, and the conductor laid over at Lincoln until arrival of Train 44 at Lincoln, and handled the Alliance-Kansas City car (Line 160) from Lincoln to Kansas City, on Train 44.

"On September 30, 1951, the Kansas City-Alliance car was discontinued and in its stead a car, designated for accounting purposes as Line 162 westbound, Kansas City to Shelby, via Omaha and as Line 161 eastbound from Shelby to Omaha at which point it terminated (pp. 32-33), therefore, the conductor run was changed to operate via Omaha, westbound, from Kansas City to Billings. On the eastbound trip, the conductor operated on Train 42 from Billings to Lincoln, handling car in Line 161, Billings to Lincoln, and car in Line 115 from Alliance to Lincoln, at which point these two cars were turned over to the Omaha conductor. The Kansas City conductor, as before, laid over in Lincoln until the arrival of Train 44 and handled a car designated for accounting purposes as Line 3040. Further changes were made in the run, effective on September 27, 1953, at which time the car in Line 162, the westbound Kansas City to Shelby car, was changed to operate from Omaha to Great Falls. The car in Line 3040, operating from Lincoln to Kansas City, was discontinued, therefore, the segment of the frozen run between Kansas City and Lincoln no longer provided sleeping car services. Under the above circumstances, the shortened operation was assigned to conductors of the Omaha seniority district, westbound, on Trains 19 and 43, Omaha to Billings, and eastbound on Trains 42 and 6. (p. 34). We note here that this latter changed operation was bulletined and the conductors were operated on the run in accordance with the Memorandum with respect to shortened runs (p. 65).

"On July 15, 1958, although there was no railroad operational change made in the run, the Carrier removed the claimant conductors from the segment of this run between Alliance and Billings."

It is the contention of Carrier that Appendix B applies only to lines, inasmuch as Line 160 is mentioned therein and no other line. That Line 160 operated only from Kansas City and Lincoln on Train 43 Westbound and Train 44 Eastbound in 1945 when the Memorandum of Agreement was entered into. At the same time, there were one-car operations of Lines 115 and 161, from Billings to Alliance, all on Trains 42, 43 and 44. Changes were made by Carrier in connection with Omaha and Lincoln as previously set forth herein.

It is the claim of Carrier that Lines 115 and 161 were not frozen as they were not set forth in Exhibit B. It is admitted they were operating one-car lines on Trains 42, 43 and 44 at the time of the Agreement and continued to operate said lines under conductors in charge for a portion of trips until July 15, 1958, when it put porters in charge between Alliance and Billings.

We believe the Memorandum of Understanding establishes the fact that the Kansas City, Billings, Lincoln run was a frozen run, for the portions thereof wherein conductors operated in charge of but one car for a portion of a trip.

Exhibit B indicates Train 42, 43 and 44 operated on the run in 1945 and it is not denied that Trains 42, and 43 are still operating and particularly on the Alliance-Billings portion of the run.

That the Carrier had the right to shorten, lengthen or discontinue runs in keeping with contractual provisions, is unquestioned. Neither can it be disputed that if a frozen run is shortened, the remaining segment is still frozen.

There has been much discussion and argument in this case as to whether conductors are assigned to lines or trains. In this case Carrier contends that only line 160 was frozen. Organization contends that Appendix B refers to trains, specifically C.B.&Q. trains 43, 42 and 44 and covers all runs on these trains in which conductors operated in charge of one car for a portion of a trip.

We are of the opinion that conductors are assigned to trains not lines. Appendix B speaks of runs and in Award 2762 the Board stated in part:

"What is meant by the word 'runs' as used in Rule 54 of the current contract? It must be remembered that when it was adopted the parties understood conductor operations were made up of trains—trains which were designated and identified not by The Pullman Company, but by the railroad over which its cars operate . . ." (Emphasis ours.) (Also Award 2763.)

There are many Awards holding similarly, a most recent one being Award 10140, wherein said Award quoted Mr. H. R. Lary, The Pullman Company's Supervisor of Industrial Relations having made the following statement in Docket PC-2466 Award 4007: "While conductor operations are designated by line numbers for accounting purposes, conductors are in reality assigned to trains rather than to particular lines."

If line numbers determined whether or not a run were frozen, the Carrier could, merely by changing the line number, "unfreeze a run"—which would most certainly be an effective way—albeit an improper way—of unilaterally terminating a bilateral agreement.

We hold that the conductor runs on trains 42, 43 and 44, particularly the segment between Alliance, Nebraska and Billings, Montana, became frozen runs by virtue of the agreement.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May 1962.

DISSENT TO AWARD NO. 10578, DOCKET NO. PC-10954

Award 10578 disagrees with Award 10140 in holding that only the portions of the involved run "wherein conductors operated in charge of but one car for a portion of a trip" were frozen by the Memorandum of Understanding. In so holding, the majority in Award 10578 also concurred in its recognition that

"Organization contends that Appendix B refers to trains, specifically C.B. & Q. trains 43, 42 and 44 and covers all runs on these trains in which conductors operated in charge of one car for a portion of a trip." (Emphasis ours.)

However, Award 10578 like Award 10140, is in error in negating and nullifying the inclusion by the parties of the Line Number in the Memorandum for designating the particular one-car conductor operation which was frozen. For this latter reason, among others, 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 REPLY
TO
CARRIER MEMBERS' DISSENT
AWARD 10578
DOCKET PC-10954**

The dissent is not only specious but palpably erroneous in its contentions. There is no disagreement between Award 10140 and 10578.

The basic issues in both Dockets were the same—viz—whether or not conductors are assigned to runs or to lines.

The majority in Award 10140 held:

"If line numbers determined whether or not a run were frozen, the Carrier could, merely by changing the line number 'unfreeze' a run—which would most certainly be an effective way—albeit an improper one—of unilaterally terminating a bilateral Agreement.

"Therefore, it seems that runs are frozen and not cars or lines."
(Emphasis ours.)

Rule 64 provides that a conductor "shall be operated on all trains while carrying, at the same time, more than one Pullman car", therefore the sole issue in both Dockets concerned the segment of the run in which the conductor was in charge of but one car.

Award 10578 holds:

"We believe the Memorandum of Understanding establishes the fact that the **Kansas City, Billings, Lincoln run** was a frozen run, for the portions thereof wherein conductors operated in charge of but one car for a portion of a trip . . .

"We hold that the conductor runs on trains 42-43 and 44, particularly the segment between Alliance, Nebraska and Billings, Montana, become frozen runs by virtue of the Agreement." (Emphasis ours.)

It is difficult to understand the Dissenter's position in this Dissent, since in Awards 2762 as well as 4007, Mr. H. R. Lary, then Supervisor of Industrial Relations for the Carrier stated:

"While Conductor operations are designated by line numbers for accounting purposes, Conductors are in reality assigned to trains rather than to particular lines."

Such patent inconsistency cannot be explained.

Award 10578 is correct and the dissent has no force or effect.

H. C. KOHLER