Award No. 10747

Docket No. PC-11166

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, 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 Conductors A. H. Ray, L. E. Hicks, and J. E. Dean, Chattanooga District, because under date of April 29, 1958, the conductor run on Sou-N&W Railway trains 42 and 41, designated as lone 6860 between Chattanooga, Tenn., and Washington, D.C., which had been operated by Chattanooga District conductors for many years, was shortened to operate between Knoxville, Tenn., and Washington.

On this date The Pullman Company, in violation of Rules 47, 33, 66, and 25 of the Agreement between The Pullman Company and its Conductors, reallocated this Chattanooga District conductor run to the Washington District, for conductor operation.

The conductor run designated as line 6860 is being operated by the Washington District conductors, with three regularly assigned conductors, with a relief after the second and third round trips, or the equivalent of three and two-thirds men.

We now ask that Conductors Ray, Hicks, and Dean be credited and paid just as though they had remained in the above-mentioned run, and that the conductors entitled to fill the relief work (the record to be checked to determine which extra conductors are entitled to the relief work) shall be credited and paid under the applicable rules of the Agreement, for each trip denied them, until such time as the run is re-established in the Chattanooga District in accordance with the rules of the Agreement.

Rule 31 is also involved.

EMPLOYES' STATEMENT OF FACTS:

I.

In order that the facts relevant to this dispute may be brought into full focus, it is necessary to outline briefly the history surrounding the

OPINION OF BOARD: On January 10, 1958 The Pullman Company issued a Conductors Operation Form at Chattanooga, Tennessee for Line 6860; this superseded a prior Form issued October 20, 1952. Line 6860 (New York and New Orleans Terminals) covered conductor service on five cars between Chattanooga and Washington operating on Sou-N&W trains 42-41 as follows:

Line	Terminals	Handled between			By		
6860	N.O. - N.Y.	Chatta.	and	Wash.	Chatta.	Dist.	Conductors
2649	Shreveport-Wash.	"	"	"	"	"	"
6862	Knox. - N.Y.	Knox	"	"	"	"	"
2276	Bristol-Petersbg.	Bristol	"	Roanoke	"	"	"
6861	Williamson-Wash.	Roanoke	"	Wash.	"	"	" (this car entered at Roanoke).

These locations are in the following districts:

Chattanooga	-	Southernmost Terminal point, Chattanooga District
Knoxville	-	Outlying Point, Chattanooga District
Bristol	-	Outlying Point, Chattanooga District
Roanoke	-	Terminal Point, Roanoke Agency
Washington, D.C.	-	Terminal Point, Washington District

In early April 1958 The Pullman Company was informed by the railroads that, effective April 29, (1) the car designated Line 2649 would be discontinued, (2) another car would be inaugurated between Washington and Bristol. As a consequence, only one car (Line 6860) would operate between Chattanooga and Knoxville on Trains 41-42.

On April 22, 1958 the Company issued a Conductors Operation Form at Washington for a "new operation" to be effective April 29. This, too, was designated Line 6860 (New York-New Orleans Terminals); but the operating points were specified Washington and Knoxville, rather than Washington and Chattanooga. Specifically, this Form covered these Lines:

Line	Terminals	Handled between			By		
6860	N.O. - N.Y.	Knoxville	and	Wash.	Wash.	Dist.	Conductors
2649	Bristol-Wash.	Bristol	"	Wash.	"	"	"
6862	Knox. - N.Y.	Knoxville	"	Wash.	"	"	"
2276	Bristol-Petersbg.	Bristol	"	Roanoke	"	"	"
6861	Williamson-Wash.	Roanoke	"	Wash.	"	"	"

On the reverse side of the Form Management noted that this new Form was prepared because: "New operation, account Chatta. condrs. withdrawn Knoxville to N.O."

Another Conductors Operation Form dated April 30, 1958 (although stamped May 2), effective April 29, pertaining to Line 6860, indicated "Operation discontinued". This Form, it was stated, "Supersedes Report Dated 1-10-1958 for Line 6860."

Convinced that it had established new service between Knoxville and Washington, the Company invoked Rule 46 to determine which conductors should be assigned:

> "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."

Washington District was awarded the run since (1) Knoxville was not considered a district under Rule 46, (2) Washington extra Conductors had greater seniority than did those at Roanoke — the other district involved.

The Organization, however, had protested Management's action as early as April 16 — and again on April 28. Since the Company had shortened the Chattanooga-Washington run to Knoxville-Washington, the Organization noted, the shortened run should have been bulletined in Chattanooga pursuant to Rule 33:

> "Any one of the following changes shall require runs to be re-bulletined and all assignments therein shall be bulletined as provided in Rule 31:
>
> 1. Any change of terminals. . . ."

Moreover, the Organization pointed out, Management would be violating Rule 47 if it reassigned the disputed runs to Washington since:

> ". . . runs assigned to a district or agency shall not be reallocated to another district or agency without conference and agreement between Management and the General Chairman."

The Company declined to alter its decision and, on May 9, the Organization submitted a claim on behalf of Chattanooga District Conductors.

It is evident that Management's actions were proper if, in fact, new service was established in April 1958. On the other hand, if new service was not established, then Management violated Rules 33, 66, 47 and 25 by unilaterally removing work from conductors in the Chattanooga District and assigning such work to Washington District men.

This Board has recognized the need for deciding "new service" disputes on a case by case basis since this key term is undefined in the Agreement (cf. Award 6476). As a result, several decisions have been rendered, each based on somewhat different factual or contractual situations. Petitioner, to support its position, cites Awards 3830, 4647, 6472, 6631 and 8565. The Company, on the other hand, belives Awards 6476, 8682 and 10444 are more in point.

What do the facts show here? The April 29 changes in essence, consisted of (1) changing Line 2649 from Chattanooga-Washington to Bristol-Washington, (2) changing Line 6860 from Chattanooga-Washington to Knoxville-Washington. There were no revisions in Lines 6861, 6862 or 2276, nor was there a change in the trains (SRR — N&W trains 42-41) on which these cars operated.

Prior to April 29, then, conductor service on those trains (south to north) stretched 618 miles from Chattanooga to Washington, including

Knoxville, Bristol, and Roanoke. After April 29 this service extended only from Knoxville to Washington, thus eliminating 111 miles between Chattanooga and Knoxville. The Company believes that new service has been established since Chattanooga, Terminal Point of the Chattanooga District, is no longer a terminal for Line 6860, but has been replaced by Knoxville, an outlying point in the same District. We cannot agree.

It is true that, under Rule 46, outlying points are not considered districts for the purpose of determining which district shall furnish conductors. But this Rule applies only **when** "new service" is established; therefore it is not helpful in resolving the more basic question of **what** constitutes "new service". On the other hand, Agreement provisions such as Rules 31 and 33 are designed to protect conductors who, by virtue of past assignments, have acquired rights to certain work. That is why, under Rule 33, a run is rebulletined when its terminals are changed, and (under Rule 31) when a regularly established run is shortened of a portion is discontinued, the remainder of the run is bulletined.

In the situation at hand, bulletins for service out of Knoxville are posted in Chattanooga for bidding by Chattanooga District conductors. Significantly, moreover, if extra work arises at Knoxville, it is assigned (except under certain specified circumstances) to a Chattanooga man in accordance with Rule 38:

> "(a) All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra conductors of that district when available, except as provided in paragraphs (d) and (e)."

In our judgment, the April 1958 shortening of conductor service did not result in establishing "new service" under Rule 46, despite a change in one terminal from a District's Terminal Point to an Outlying Point in the same District. Shortening pre-existing service, in other words, does not automatically lead to the establishment of new service, nor does the change in terminal which occurred here have that necessary result.

Notwithstanding the decision in Award 10444, which we have carefully reviewed, and despite the substantial similarity in facts, we adhere to the conviction that our reasoning here is correct. Although the principle of **stare decisis** has been recognized by this Board, it cannot reasonably be held, in our opinion, that one award, recently rendered, constitutes the kind of controlling precedent which that principle contemplates.

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 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 August 1962.

CARRIER MEMBERS DISSENT TO AWARD 10747

DOCKET PC-11166

Award 10747 is in error in misconstruing Rule 33. **Re-bulletining Changed Runs** of the Agreement, which rule obviously does not fit the facts of the dispute. As the title specifies, the rule is designed to require a changed run to be re-bulletined in the home terminal of the run. In other words, the facts must show that the work in the run still arises at the roster point or home district of the conductors who operated the run before the change occurred. It is illogical to hold that a district must re-bulletin an operation that it no longer possesses because of a change in terminals.

The only way that Chattanooga conductors could properly have claimed the right to bid on new Line 6860 in April, 1958, would have been for the operation to retain Chattanooga as the home terminal of the operation. Facts of record clearly show that effective April 29, 1958, Chattanooga was no longer the home terminal of the service in question between Knoxville, Tenn., and Washington, D.C. Award 10747 in its erroneous interpretation of Rule 33 is in effect freezing the operation that existed prior to April 29, 1958, to the conductors of the Chattanooga District, which is a condition not comprehended by Rule 33 or by any other rule of the Agreement between the parties.

It seems obvious that disputes of this kind should be resolved on the basis of contract provisions and not on the basis of sympathy for a given set of conductors. The fact that the Chattanooga District conductors operated in Line 6860 between Chattanooga and Washington for many years is not a fact that should supersede the contract. What happened to the Chattanooga conductors was the result of correct application of a contract provision and nothing more. To hold Award 10747 does that the Carrier should not remove the work from Chattanooga without consultation or agreement with the Organization is a faulty deduction because it ignores the application of other provisions of the Agreement with especial reference to **Rule 46. Assignment of Runs to Districts.**

Also Award 10747 is in error in stating "new service disputes" have been decided by the Board in a case by case basis and then proceeding to ignore the facts that identify this specific operation as new service to be handled under the provisions of Rule 46. The Award makes no recognition of the fact that Chattanooga is not a terminal district of the run. The Award ignores the fact that the history of the run as presented by the Organization itself shows that in all instances where Chattanooga

District Conductors were assigned to operate on trains 42-41, Chattanooga was a terminal district of the run. Certainly the mere fact that Knoxville is an outlying point under the jurisdiction of the Chattanooga District does not give Chattanooga conductors any right to operate in the run. Undeniably there was a change in the run that deprived Chattanooga of its status as the home terminal of the run. It is little short of ridiculous to hold that the conductor run between Washington and Knoxville, established April 29, 1958 was a "shortened" Chattanooga-Washington run which should have been bulletined in the Chattanooga District. This reasoning completely ignores the transparant fact that the Chattanooga-Washington run was discontinued in its entirety, that all of its parts were discontinued and that the run Washington-Knoxville was not a "part" of the non-existent Chattanooga-Washington run but was instead new service established over a portion of the route previously traveled by Chattanooga conductors in the discontinued run.

Award 10747 holds that the Knoxville-Washington run is not new service, but the Award offers no logical reason why it is not new service. This leaves the question of what constitutes new service in a state of complete confusion. The fact that the run operated over some of the same territory as a run formerly in existence does not provide a sound basis for declaring such new run is not new service. The record shows that the Organization has conceded in prior cases that a run which operates over the same territory as a run formerly in existence may be considered new service and assigned to another district without conference and agreement with the Organization. Under Rule 46 the Company had no alternative but to consider the seniority of the "districts involved"; namely, Washington and Roanoke, and award the run to the district having the higher average seniority. It is well understood by the parties that a district having jurisdiction over an outlying point that becomes a terminal in a run does not become a "district involved" if the run has another district as its opposite terminal.

The Award gives evidence of further misunderstanding when it sets forth that certain extra work arising at Knoxville is assigned to Chattanooga conductors in accordance with **Rule 38. Operation of Extra Conductors.** Also the Award refers to the fact that bulletins for service out of Knoxville are posted in Chattanooga for bidding by Chattanooga District conductors. These are confusing and not clarifying statements. The fact that Knoxville is an outlying point of Chattanooga is not denied. Thus, Chattanooga District conductors are entitled to perform, under Rule 38, such extra work as arises at Knoxville except under certain specified circumstances not pertinent here. Further, under **Rule 48. Runs between Outlying Points,** when a regular run is established between two outlying points under the jurisdiction of two different districts, the district whose extra conductors to the number required to man the run have the higher average seniority will operate the run. These matters are covered by two specific rules (Rules 38 and 48) and have nothing to do with the point at issue.

We take issue with the obvious fact that Award 10747 accepts the erroneous premise that the Chattanooga-Washington run was shortened Knoxville-Washington, effective April 29, 1958. The facts of record establish beyond the possibility of successful contradiction that the pre-existing service was discontinued and that the resulting service was indeed new service to be awarded in accordance with Rule 46. The thesis that the run was shortened and thus subject to Rule 33 could be valid only if the

run continued to operate into the district which initially operated the run, in this case Chattanooga.

The Award ignores prior awards of this Board; namely, Awards 6476, 8682 and 10444, which uphold the Carrier. The Board concedes that the principle of **stare decisis** is recognized by the Board and then proceeds to ignore denial Award 10444, which dealt with the precise principle herein involved. The Carrier Members deplore awards that confound and confuse. In Award 6784 (Donaldson), we said:

> "If a case is presented involving the same controlling facts and the same rule as were involved in a previous Award, and the same data and material arguments are presented as were presented in the previous case, the Award in the previous case should be followed * * *. For in such a situation there is nothing new which has not been passed upon and taken into account before, and the only question is whether the personal judgment of the latter referee * * * should be substituted for that of the former referee."

Here the Board follows an exact opposite course than it followed in denial Award 10444 and such contrary handling tends to discourage settlements between the parties and discourages prompt compliance with Awards.

For the foregoing reasons, among others, we dissent.

/s/ R. E. Black
R. E. Black

/s/ W. F. Euker
W. F. Euker

/s/ R. A. DeRossett
R. A. DeRossett

/s/ O. B. Sayers
O. B. Sayers

/s/ G. L. Naylor
G. L. Naylor

LABOR MEMBERS' REPLY TO CARRIER MEMBERS' DISSENT TO AWARD 10747 IN DOCKET PC-11166

The dissent ignores the clear provisions of the Agreement and attempts to read into the Agreement words and phrases not there present.

For example, the very first paragraph in discussing Rule 33 would attempt to have the reader understand that runs are "re-bulletined **in the home terminal** of the run." (Emphasis ours.)

The illusion created by inclusion of the emphasized phrase might possibly help to sustain some of the Carrier's contentions if such phrase **did** appear in the Agreement. But, a close look at Rule 33 discloses that no such phrase is present, only that:

> "Any one of the following changes shall require runs to be re-bulletined and all assignments therein shall be **bulletined as provided in Rule 31:**
>
> 1. Any change in terminals."

Nor can this phrase be found in Rule 31 which does not refer to bulletining being done **"in the home terminal"**, but rather uses the phrase, "in the **district** where they occur." (Emphasis ours.)

Dissenters are either not aware that the provisions of Rule 31 (f) clearly comprehends that there will be runs bulletined **"where the home lay-over is at an outlying point"**, or choose to ignore this provision in an overt attempt to establish their erroneous contention that in order for a run to be available to REGULAR men by bulletin, bid or assignment, such run must have as its terminal the actual home terminal of the District.

Dissenters can not plead ignorance of the presence of Rule 48 in the Agreement for they have quoted it in the dissent. This rule provides for the manner of determining jurisdiction when a run is established between two outlying points of two different districts.

Not only do the rules permit the establishment of a regular run between two outlying points in two different districts but a regular run may be bulletined to operate between a home terminal of one district and an outlying point of another district; or an **established run** may operate from an outlying point under the jurisdiction of one district into the home station of another district. See numerous examples cited by Employe's Ex Parte Statement, pages 30 to 35, appearing as Record pages 33 to 38.

By inference in the dissent, the contention that Rule 46 is controlling is again brought forth although such contention has been rejected.

Rule 46 provides that:

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

Therefore, it is obvious that before Rule 46 may be applicable, it must be determined that the run is "new service".

As states in Dissent to Award 10444, and reiterated here, in regard to the injection of Rule 46:

> ". . . 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."

The Awards referred to are 3830, 4647, 6473, 6476, 6631 and 6653. The negotiations referred to were a part of Emergency Board #89.

The Dissenters state: "The record shows that the Organization has conceded in prior cases that a run which operates over the same territory as a run formerly in existence may be considered new service and assigned to another district without conference and agreement with the Organization."

In the few instances where the above concession has been made, the Dissenters studiously overlooked stating that the run there involved was shortened to the extent that it did not operate into the original district or to an outlying point under the jurisdiction of the original district. Therefore, the shortened runs operated completely outside of the original district.

As stated in Award 6476: "What actually happened was a curtailment of the Chicago-New Orleans run to a Carbondale-New Orleans run. The curtailment could no longer be assigned to the Chicago District, hence it follows that the assignment should have been made to the New Orleans District."

Carbondale was completely **outside** of the jurisdiction of the Chicago South District.

In the instant case, **Knoxville** was **under the jurisdiction** of the Chattanooga District.

Award 10747 clearly recognizes Award 10444 to be incorrect and effects correction, which is clearly consistent with the pungent observation attributed to the late Justice Jackson, that just because the court was wrong yesterday is no reason that it should not be right today.

Dissenters seem to insist upon blindly following the principle of stare decisis, (where such principle upholds their contentions), but ignore the admonition of Referee Hanlon in recent First Division Award 20125 which holds:

> "While it is recognized that some semblance of a stare decisis approach is desirable in Railroad Adjustment Board cases, nevertheless it seems also to be generally recognized that the Referee will never blindly follow precedents where such a course will merely serve to compound error."

Dissenters state:

> "The thesis that the run was shortened and thus subject to Rule 33 could be valid only if the run continued to operate **into** the district which initially operated the run, in this case Chattanooga." (Emphasis ours.)

Dissenters, however, admit that:

> ". . . Knoxville is an outlying point under the jurisdiction of the Chattanooga District. . . ."

And further that:

> "The fact that Knoxville is an outlying point of Chattanooga is not denied."

Certainly Rule 66 (The Book of Maps) outlines the Districts and the train here in question continued to run **INTO** the district, namely Knoxville.

Dissenters attempt to misconstrue their term, "terminal district", to be synonymous with the term, "District", as used in the Agreement.

Assume for the sake of argument that each state represented a **District** and each State Capitol represented the home terminal of that District. Could we then say that a run entering Virginia, but not entering Richmond, **did not enter into** the District of Virginia, if the run did go into Charlottesville. Certainly not.

This is certainly not logical or sensible but is exactly what the Referee did in Award 10444.

The Referee in Award 10747 ascertained this error and attempted to correct it in the adjudication of this dispute in Award 10747.

There are many more errors and misstatements of fact in the dissent but we have only pointed out sufficient of them to show that Award 10747 is correct, and contrary to what dissenters would like us to believe, does not confound and confuse, nor should it have a tendency to discourage settlements between the partis, nor should it discourage prompt compliance with the Awards. Rather, Award 10747, which is a correction of the erroneous findings in Award 10444, should be used as a precedent to resolve any further disputes of like nature.

/s/ R. H. Hack
R. H. Hack, Labor Member