

Award No. 11108

Docket No. PC-11770

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, 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 E. S. Kittle, Penn Terminal District, that The Pullman Company violated Rules 15 and 31 of the Agreement between the parties when:

1. The NYNH&H, and MC Railroads, on June 20, 1958, operated trains 184-85-53 from New York, N. Y. to Rockland, Me., departing each Friday and returning from Rockland each Sunday on MC train 776, BM train 84 and NYNH&H train 185, and failed to bulletin this run as a regular conductor operation in accordance with the rules.

This run operated from June 20, 1958 to August 29, 1958.

2. Because of this violation we now ask that Conductor Kittle be credited and paid the same as though he had been regularly assigned, in accordance with the applicable rules of the Agreement.

Rules 5, 20 and 25 are also involved.

EMPLOYEES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing an 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 pertinent parts of the applicable rules are quoted as follows:

is that when there are sufficient fractional sides of runs in a district to constitute full-time service, the full-time service is bulletined as provided in Rule 34. In the instance case, there was a requirement of but $\frac{1}{2}$ man (92:30 hours per month). This requirement, of course, could not be considered full-time service. Each of the trips in question was treated as extra service and was properly performed by an extra conductor who was fully compensated as provided in the rules.

The Organization well knows that Rule 31 was not intended to have application to once-a-week operations and has recognized this fact by registering no protest, except in one isolated case, to the Company's practice of assigning extra conductors to once-a-week seasonal operations. For example, the New Haven's "Night Cape Codder" has for many years operated solely on week-ends during the summer seasons (June to September) between such points as New York and Hyannis and New York and Woods Hole. The run has never been bulletined as a regular run under Rule 31 and has always been operated with extra conductors. The Organization is aware of this fact. Yet the Organization has never contended that Rule 31 is applicable. Also, the Pere Marquette "Resort Special" between 1951 and 1955 operated on week-ends on a seasonal basis between Chicago and Petoskey and was handled by extra conductors without protest by the Organization. Also, extra conductors for many years handled seasonal weekend operations on the Long Island Railroad between New York and Montauk.

The Company submits that the remaining rules cited by the Organization as having been violated (Rule 15) or being involved (Rules 5, 20 and 25) would be pertinent to this dispute only in the event it could be established that work in connection with the operation of the "Bar Harbor Express" did not constitute extra service and that the Company was obliged to bulletin it under Rule 31. This the Organization has not done and cannot do.

CONCLUSION

The Pullman Company has shown in this ex parte submission that the trips made by the "Bar Harbor Express" between June 20 and August 29, 1958, occurred on a once-a-week basis, constituted a fractional part of an operation and that there is no obligation on the part of Management to bulletin such an operation as a regular run under Rule 31. The Company has shown further that the Organization has in the past recognized the fact that Rule 31 does not apply to once-a-week operations. Finally, the Company has shown that Rules 15, 5, 20 and 25 would be applicable to this case only in the event it could be established that the work on the "Bar Harbor Express" during the period in question was not extra service.

The claim in behalf of Conductor Kittle 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: There is in effect between the parties hereto an Agreement effective September 21, 1957. Rule 31 of this Agreement reads as follows:

"ASSIGNMENT TO RUNS

"RULE 31. Bulletining of Runs. (a) New runs and each assignment (side) in a run that has preferred assignments (sides) shall be promptly bulletined for a period of 10 days (240 hours) in a district where they occur. Any of the following runs known to be of more than 31 days' duration shall be promptly bulletined for a period of 10 days (240 hours) in the district where they occur:

- "1. Temporary runs.
2. Seasonal runs.
3. Vacancies.

'Conductors desiring to bid for such runs or assignments shall file their applications with the designated official within the 10-day period they are posted, and awards shall be made prior to the start of the signout period on any day within 5 days (120 hours) thereafter on the basis of seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. Conductors bidding on more than one bulletined run or assignment shall specify in their applications their first choice, second choice, etc."

During the period June 20, 1958 through August 29, 1958, a train designated as the "Bar Harbor Express" operated once a week Philadelphia-New York to Bangor and Rockland, Maine, with departure from Philadelphia and New York each Friday night. Between Philadelphia and New York a Philadelphia conductor was in charge of cars destined Portland, Bangor and Rockland. Upon arrival in New York two cars were added to the Bar Harbor Express en route Bangor and Rockland. Since the Bar Harbor Express was split into two sections upon arrival in Portland, Maine, a Pennsylvania Terminal District Conductor was also assigned to the Bar Harbor Express. Upon arrival in Portland the Philadelphia District conductor took charge of the cars destined Bangor; the Pennsylvania Terminal District conductor took charge of the cars destined Rockland. The Bar Harbor Express departed Bangor and Rockland each Sunday evening for the return trip.

The Claimants' position is that the Bar Harbor Express was a seasonal run from June 20, 1958 to September 1, 1958, as contemplated by Rule 31 and that the Carrier failed to bulletin this run as a regular conductor operation in accordance with the rules.

The Carrier contends that the service in question was properly treated as extra service under Rule 22 and Rule 38, and that neither Rule 31, nor any other rule of the Agreement was violated.

The facts have been completely presented in the submissions of both parties which appear above and they will not be repeated here.

Award 10203 (Gray) is squarely in point on the principal issues before us in this case. This award reads in part as follows:

* * * "We must be bound by the clear and concise meaning of Rule 31. We cannot read into the record something that is not there.

"It is the contention of the Petitioner that Respondent violated the provisions of Rule 31 when it failed to bulletin the Pullman Conductor assignment as a regular position.

"The language in Rule 31 definitely requires that seasonal runs of more than 31 days duration must be bulletined. There are no exceptions in Rule 31 to this provision. The record itself clearly shows that the time was from July 11 to September 8 and this is more than 31 days. There would be a distinction if the seasonal run was less than 31 days duration but such is not the case here.

"This Board has held that the Carrier is required to do what it has contracted to do, even though that may not be the easiest or most economical manner, which is directly in point in the instant dispute.

"We are not in a position to discuss the question of justification of the action of the Carrier, but we are concerned only with the question of the requirement of the rule. There is no mention in Rule 31 as to the frequency of a run being a part of a run being a part of the Agreement. (Emphasis ours.)

"We must hold that any run of more than 31 days duration and of a seasonal nature must be bulletined in accordance with Rule 31. The Carrier having failed to bulletin the runs as required by Rule 31 violated the conditions as set forth therein and we must sustain the claims of the Petitioner."

The Board finds that the run in the instant case was a seasonal run, operating from June 20, 1958 to August 29, 1958; that this run was in excess of 31 days; that the provisions of Rule 31 are clear and have been correctly interpreted by Award 10203. That the Carrier has violated the Agreement by its failure to comply with the provisions of Rule 31.

The claim is sustained.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February, 1963.