Award No. 11304
Docket No. PC-12161

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, 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, Chicago Division 715, claims for and in behalf of Conductors C. B. English and J. Horan, Chicago Western District, that:

1. Rule 38(b) of the Agreement between The Pullman Company and its Conductors was violated by the Company when the Company issued Assignment to Duty Slips to Conductors English and Horan with destination improperly indicated as "St. Paul."

2. The required destination of these assignments was "Los Angeles."

3. Rule 64(a) of the Agreement was violated by the Company when the Company permitted the operation of thirteen Pullman cars in service on the train herein designated as "Milwaukee Special" between Winnipeg and Vancouver without assigning any Pullman Conductor. The Award of the Special Board of Adjustment in National Mediation Board Docket No. 3099 is also involved.

4. Rules 38(a) and 25 were violated by the Company when the Company operated these Pullman cars between Vancouver and Los Angeles with Pullman Conductors not entitled to the assignment.

5. Conductors English and Horan each be credited and paid under appropriate rules of the Agreement for the trip improperly withheld, Chicago to Los Angeles in extended special tour service and Los Angeles to Chicago in deadhead service (less credit and pay received for the trip Chicago to Winnipeg).

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties bearing an effective date of January 1, 1951, and amendments thereto, including revisions effective May 17, 1957, and September 21, 1957. A copy of this Agreement and revisions

(Exhibits p. 6 of Awards in National Mediation Board Docket No. 3099.)

Similar claims, Claims Nos. 1, 2, 7, 8, 9, 10, 11, 12, all of which were denied, are included in Exhibit I. It should be noted that in each instance claim was denied on the basis that the work claimed was work which The Pullman Company did not control, and, in fact, never had controlled. Claims sustained, Claims Nos. 3, 4 and 5, also included in Exhibit I, were sustained for reasons which are not involved in the case at hand.

In a recent Award rendered by the Third Division, Award 9539 (Merton C. Bernstein, Referee), settling a dispute between The Pullman Company and its conductors, known as the "Mountaineer" case, the Board analyzed the significance of the Swacker Award (Docket No. 3099) and the basis on which Awards were made in that docket. According to the Board in Award 9539, the Swacker Board held "an implicit element of Rule 64(a) was that it applied only in United States territory," "that Pullman Conductors never had the rights claimed in Canada and Rule 64(a) gave no evidence of intent to go beyond **past practice.**"

CONCLUSION

In this ex parte submission the Company has shown that the Company properly assigned Conductors English and Horan to operate in service Chicago-Winnipeg. Also, the Company has shown that The Pullman Company had no power to assign Pullman conductors to operate on the lines of the Canadian National Railway involved in this dispute. Finally, the Company has shown that there has been no violation of Rules 64(a), 38(a) and (b), and 25 or any other rule of the Agreement and that the Awards of the Special Board of Adjustment in National Mediation Board Docket No. 3099 support the Company in this dispute.

The Organization's claim that Conductors English and Horan are entitled to be credited and paid for a service trip, Chicago-Los Angeles, and a deadhead trip, Los Angeles-Chicago, less credit and pay for a service trip Chicago-Winnipeg, 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 employes or their representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 6, 1956, a special train carrying twelve Pullman cars occupied by members of the "American Association of Nurserymen", departed Chicago en route to Los Angeles via the Milwaukee Road to St. Paul, the Great Northern to Winnipeg, the Canadian National to Vancouver, the Great Northern to Portland and the Southern Pacific to Los Angeles. Winnipeg and Vancouver are "Gateway" points dividing United States Service from Canadian Service. On July 5th Claimants (Conductors English and Horan) were given assignment to duty slips to perform extra road service from Chicago to Winnipeg, Canada, thence to return to St. Paul in deadhead service. On the special train Conductors of the Canadian National Railway handled the service from Winnipeg to Vancouver. Pullman conductors from the Seattle District were assigned to handle the service from Vancouver to Los Angeles. The present claim is based upon the premise that Carrier was required to assign Claimants through to Los Angeles and that failure to do so was a violation of Rules 25, 38(a) and (b) and 64(a) of the Agreement.

Specifically Petitioner asserts that Rule 38(b) was violated when Claimants were given assignment to duty slips with destination St. Paul (deadhead following service trip to Winnipeg) instead of Los Angeles; that Rule 64(a) was violated when the Pullman cars were operated between Winnipeg and Vancouver without Pullman Conductors being assigned; and that Rules 38(a) and 25 were violated when the cars were operated between Vancouver and Los Angeles with Pullman Conductors other than Claimants.

Carrier maintains that Claimants were properly assigned and that no Rules of the Agreement were violated.

Although Petitioner has specifically invoked Rules 25 (Basic Seniority Date) and Rules 38(a) and (b) (operation of Extra Conductors) these rules necessarily apply to the service covered by Rule 64(a). The real issue in this case, therefore, is whether Rule 64(a) grants Pullman Conductors the right to sleeping car work on Pullman cars operated between Winnipeg and Vancouver over the lines of the Canadian National Railway?

Rule 64 (a) provides: "Pullman Conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, in service . . ." Petitioner says this Rule covers all work on all of Carrier's cars at all times in the United States and elsewhere and is not restricted to any specified territory. It argues that Carrier cannot by an agreement with Canadian National Railway remove work from this Agreement. The Carrier replies that it did not take work from the Claimants; that the work in question never belonged to the Conductors; that Rule 64(a) applies only to work over which Carrier has control; and that since the Canadian National Railway operated its own sleeping car service between Winnipeg and Vancouver Carrier had no control over this service and therefore no right to assign Conductors to this run.

The issue involved in this case was decided adversely to Petitioner in National Mediation Board Docket No. 3099 (known as the Swacker Award). There in a dispute between the same parties, the Board held that Rule 64(a) applied only in "United States Territory" (in the United States and in Canada between the border and gateway points) and that it did not contemplate that Pullman conductors would operate on Pullman cars in so-called "railroad territory". The major ground for the Swacker Award was that Pullman conductors never had the rights claimed in Canada and that Rule 64(a) gave no evidence of intent to go beyond past practice. In the course of its opinion, the Board said:

> "This is not a case of some work being taken away from Pullman conductors. They never did have this work. The contract they have relates to work which the Pullman Company controls. The Pullman Company, of course, does not control that work in Canada and never has, and consequently it would be sort of trying to hoist themselves by their own bootstraps to make 64(a) enlarge the scope of the contract beyond operation of the Pullman Company . . ."

In Award 9539 this Board adopted and applied the Swacker Board's interpretation of Rule 64(a). The Petitioner argues that the Swacker Award is no longer valid because in a later case the Carrier has acquiesced in transferring certain operations in United States Territory to Canadian Railroad employes without securing reciprocal rights for Pullman Conductors in Canadian Territory. In this connection Petitioner makes much of the fact that the Swacker Board referred to the arrangement whereby Canadian conductors

were allowed to work on Pullman cars in Canada and Pullman conductors enjoyed the operation of Canadian lines in the United States as a reciprocal proposition. But Petitioner conveniently overlooks the language immediately following the phrase "reciprocal proposition". The Board's next words were, "and if it [the reciprocal proposition] does not balance so far as they [Pullman Conductors] are concerned that might be a subject matter for negotiations." In view of this specific statement by the Board we cannot agree with the suggestion that changes in conductor service invalidated the Swacker Award or modified the Board's interpretation of Rule 64(a).

Petitioner has relied upon Award 4000 of this Board as supporting its position. We consider that case as distinguishable on its facts and not in point here. There the Pullman Company had leased its cars to the New York Central for service in United States Territory over which Pullman Conductors had work rights under the Agreement. The case did not involve sleeping car service on Canadian lines in Canada. Furthermore, the Award was rendered prior to the Swacker Award.

For the reasons expressed we hold that issue in this case is controlled by the Swacker Award and our Award 9539, and that Rule 64(a) gave Claimants no rights to the sleeping car work on the Pullman Cars operated between Winnipeg and Vancouver over lines of the Canadian National Railway. It follows that Carrier's assignment of Claimants did not violate 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 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 11th day of April 1963.