Award No. 12128
Docket No. PC-14143

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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. J. Cleary, Penn Terminal District, that Rules 25 and 38 were violated when:

1. On December 14, 1958, a section of PRR train 41, carrying two or more Pullman cars, departed from Penn. Terminal Station without the services of a Pullman conductor.

2. Because of this violation we ask that Conductor Cleary be credited and paid just as though he had been properly assigned, i.e., for a service trip New York to Pittsburgh, and for a deadhead trip Pittsburgh back to New York, under the applicable rules of the Agreement.

EMPLOYES' STATEMENT OF FACTS:

I.

On Sunday, December 14, 1958, a section of PRR train 41, handling more than one Pullman car destined for Detroit, Mich., departed from Penn Terminal Station, New York, without the services of a Pullman conductor. Conductor E. J. Cleary, of the Penn Terminal District, was available and willing to perform the service.

Train 2/41 operated from New York to Philadelphia without the services of a Pullman conductor, in violation of Rule 64 of the Agreement between The Pullman Company and its Conductors.

Rule 64(a) reads as follows:

"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, except as provided in paragraph (c) of this Rule."

Paragraph (c) is not pertinent to this dispute.

When train 2/41 arrived in Philadelphia, the Philadelphia District assigned Philadelphia District Conductor S. J. Weiss to be in charge of the Pullman cars on 2/41 from Philadelphia to Pittsburgh, (Min. p. 17).

ber 11, 1961, before whom the Organization sought to have Item 5 of the Memorandum of Understanding changed to provide payment for a deadhead trip from another district or agency back to the conductor's home station in addition to the payment for the service trip to the other district or agency. The Board held that Point 5 of the Memorandum as presently written is entirely consistent with the other points of the Memorandum and recommended that the Organization's entire proposal with respect to payment for deadhead service not performed be withdrawn.

CONCLUSION

In its ex parte submission the Company has shown that because of the emergency circumstances that were present in the Penn Terminal District on December 14, 1958, it was impossible for the Company to cover the operation of the second section of PRR train No. 41 between New York and Philadelphia. Also the Company has shown that a Philadelphia District conductor covered the operation in question between Philadelphia and Pittsburgh. Further, the Company has shown that Management offered to compensate Claimant Cleary for a service trip New York-Philadelphia, as provided in Item 5 of the Memorandum of Understanding Concerning the Manner in Which Conductors Shall Be Paid When 2 or More Pullman Cars Operate in Service Without a Conductor. Finally, the Company has shown that the doctrine of laches is applicable to this case in view of the Organization's unreasonable delay in progressing the case to the Board.

Claim in behalf of Conductor Cleary is without merit and should be denied.

All data contained herein 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: The essential facts are not in dispute. On December 14, 1958, Train 41, which was scheduled to leave Penn station in New York at 5:15 P. M., was made up to operate in two sections, the second section scheduled to depart at 5:25 P. M.

The first direct knowledge the Company had of the change was at 4:55 P. M., thirty minutes before the departure of the second section. No Pullman Conductor was assigned to the second section, and the train left New York without one. A Pullman Conductor took charge of the second section at Philadelphia as arranged by telephone from New York. Section 2 was en route to Detroit. Under regular schedule conditions a Pullman Conductor leaving New York would be relieved by a Detroit District Conductor in Pittsburgh. Under the existing circumstances, the Pullman Conductor who took charge of the train in Philadelphia was relieved in Pittsburgh by a Detroit District Conductor.

Petitioner contends that the Company violated Rules 25, 35 and 64(a) of the Agreement when the second section of Train 41 left New York without a Conductor. Claim was filed on behalf of E. J. Cleary, an unassigned, available Conductor, for full compensation for a service trip New York to Pittsburgh, and for a deadhead trip Pittsburgh back to New York.

The Company first contends that the claim should be dismissed because Petitioner failed to prosecute the claim within a reasonable time. They argue

that Petitioner is guilty of laches because, although the claim was denied by the Company's Appeals Officer on September 16, 1959, it was not filed with the Board until June 4, 1963, more than three and one-half years later.

Rule 49(k) of the Agreement says:

> "(k) Decision of the highest officer designated to handle appeals shall be final and binding unless within 60 days from date of such decision the said officer is notified in writing that his decision is not accepted. Any further appeal shall be taken in accordance with the provisions of the Railway Labor Act."

On September 18, 1959 Petitioner advised the Company that the decision of its highest appeals officer declining the claim was unsatisfactory. That part of the Rule was complied with.

No definite time limits are prescribed in the Railway Labor Act for appeals to the Board. The Act does contemplate prompt settlement of disputes. One of its purposes is "to provide for prompt and orderly settlement of all disputes. . ." We agree with the many Awards cited by the Company that a Claimant may not unduly delay an appeal to the Board. These Awards, for the most part, dismissed the claims because the delay was unexplained and no extenuating circumstances were present. In Award 10544 (Daly) we said:

> "The Organization offered no explanation for the delay of approximately five and a half years in progressing the claim to this Board — nor does the record reveal any extenuating conditions. Therefore, we can only conclude that the Organization was solely responsible for the delay."

Again, in Award 10020 (Rose) we said: "The unexplained delay of more than five years in taking this appeal was clearly unreasonable." Although the delay question is discussed in Award 9788 (Fleming), the claim was denied because of lack of proof. Likewise, the delay question in Award 8325 (McCoy) was used to support a denial of the claim because the Board could not "find that this work was work coming exclusively under the jurisdiction of the Agreement with this Organization."

Even in Award 8209 (McCoy) we said:

> "We hold that when, following an earlier apparent abandonment of the claim, the Carrier again declined the claim on March 8, 1950, that decision became final when the Organization failed to process it to this Board within a reasonable time. In considering what would have constituted a reasonable time, we have taken into account the earlier extended delay and apparent abandonment of the claim."

The claim in Award 8162 (Bailer) was dismissed for unreasonable delay because there were "no extenuating circumstances involved."

There are extenuating circumstances for the delay in this case. At the time this claim arose, there was pending a similar claim involving the same parties and identical issues relevant to the interpretation of the Memorandum of Understanding of September 21, 1957 which is appended to and made a part of the Agreement. Particularly involved was Item 5 of that Memorandum which is also in issue in this case. The Board sustained the claim in Award 11459 (Miller) on May 27, 1963. Petitioner appealed the claim now under consideration to this Board on June 4, 1963, about a week later.

It is understandable that Petitioner would not be eager to have multiple claims pending before the Board, involving the same Company and the identical issue. While it is desirable and necessary to dispose of disputes and grievances with reasonable dispatch, it is also desirable to avoid multiple cases before the Board involving the same parties and the same issue. It is reasonable to assume that the parties will abide by the decision of the Board's Awards and dispose of all similar claims on the basis of those Awards. Had the Board denied the claim in Award 11459, Petitioner, in all probability, would have withdrawn the claim. If it pursued it before the Board, it would show bad faith. The claim is properly before the Board.

It is the Company's position that Claimant is entitled to 6:50 hours pay under paragraph (5) of the "Memorandum of Understanding Concerning The Manner In Which Conductors Shall Be Paid When 2 Or More Pullman Cars Operate In Service Without A Conductor." Petitioner contends that Claimant is entitled to full compensation under the "Memorandum Of Understanding Concerning Compensation For Wage Loss." This issue has been considered by this Division in Awards 9587 and 11459 wherein we sustained the claims.

We have carefully examined these Awards, and we conclude that there is nothing palpably wrong with their findings and decisions. The conditions under which the terms of the first Memorandum applies do not here exist.

The Company also argues that an emergency existed on December 14, 1958 which it could not have foreseen and that in any event Claimant could not have been available in sufficient time.

The record shows that extra Pullman Conductors were required on December 2, 3, 4, 8 and 9, 1958, "either on account of splitting, addition of extra cars, or for other reasons." Further, the record shows that there was a strike on a major airline on December 14, 1958 and that many of the travelers shifted to rail transportation. There is nothing in the record to show that the Company took any steps to protect itself against these conditions.

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 Company violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.