Award No. 12249
Docket No. PC-14276

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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 the following Salt Lake Agency Conductors that Rules 25 and 38 of the Agreement between The Pullman Company and its Conductors were violated on the dates involved, as shown below, when the conductors listed were not assigned to SP train 27 between Ogden, Utah, and Oakland, California:

A. L. Nelson	July 16
T. V. Jones	July 17
J. L. Harrington (regular)	July 19
J. B. Moore	July 21
A. L. Nelson	July 24
Frank Nelson	July 25
T. V. Jones	July 26
J. B. Moore	August 12
T. V. Jones	August 17
Frank Nelson	August 20
Frank Nelson	August 21
G. W. Wortley	August 23
I. A. Bosen	August 24
I. A. Bosen	August 25
I. A. Bosen	August 27
W. E. Watson	August 31

We ask that each of the above listed conductors be paid for an extra service trip Ogden to Oakland, and for a deadhead trip Oakland back to Salt Lake City.

EMPLOYES' STATEMENT OF FACTS: 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.

No. 2 arrived Washington at 8:57 A. M. and departed at 9:40 A. M. The Organization alleged violation of Rules 22, 25, 38 and 61 and stated "the issue to be determined here is whether the conductor run on B&O Train 2, which is covered by an Operation of Conductors' Form, was extra service and, therefore, subject to the option contained in Rule 64 (b); or, was it a conductor run, making it mandatory for Carrier to assign a conductor." The Board ruled that Rule 64 (b) governed and rendered denial award. The following appears under **OPINION OF BOARD** of Award 10570:

> "Rules 22 and 38 apply specifically to extra service. It has been held by this Board that Rule 38 must be read in conjunction with Rule 64, as the latter rule applies to extra men as well as regularly assigned men. Award 5934.
>
> Rule 61 was not violated because Train 2 was not cancelled on the claim date and departed from Washington in charge of Hoboken Conductor, Del Bochman, who thus completed the trip to Jersey City.
>
> We are of the opinion that Rule 64 (b) governs this particular claim and that this Rule did not require Carrier to assign a conductor to the make-up train carrying one Pullman car: that under the condition then existing Carrier had a right to assign a porter in charge, at its option.
>
> Question has been raised by Organization as to the status of the employe designated for this trip as porter-in-charge. The record shows he was competent, was equipped for such duties and was paid the porter-in-charge rate for the services performed. If such designation were improper, it might be a matter of concern between the Carrier and the Organization representing the Porters, but we feel this plays no part in the issue we are here determining."

CONCLUSION

In this ex parte submission the Company has shown that this case is improperly before the Board. The claim filed by Local Chairman Watson, dated September 11, 1962, did not comply with the provisions of Rule 51 and the revised claim was not filed within 60 days from date of occurrence of alleged violation as required by the Rule.

The Company has also shown there has been no violation of Rules 25, 38 or any other rule of the Agreement in this case. Management properly exercised its option under the provisions of Rule 64 (b) and assigned a porter in charge to protect the one-car operation Ogden-Oakland on each of the dates in question. Additionally, the Company has shown that the Organization improperly is attempting to persuade the Board to write a rule in the Agreement on a subject which properly should be negotiated. Finally, the Company has shown that Awards of the National Railroad Adjustment Board support the Company's position in this dispute.

The claim in behalf of Conductors Nelson, Jones, et al., is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to July 15, 1962, the single Pullman car of Line 655, the car involved in the instant dispute, was regularly scheduled to

operate in care of a porter-in-charge on S.P. Trains 27 and 28 between Ogden, Utah, and Oakland, California, in both directions. Effective July 15, 1962, and at all times material herein, the car was scheduled to operate on U.P. Train No. 9 from St. Louis to Ogden in charge of a St. Louis Conductor; and, at Ogden the St. Louis Conductor was scheduled to turn over the car to a San Francisco Conductor to handle it into Oakland on S.P. Train No. 101.

On the dates specified in the claim U.P. Train No. 9 was late in arriving at Ogden and missed connection with S.P. Train No. 101. On each of these occasions the car was placed on S.P. Train No. 27 which did not carry any other Pullman equipment. The porter on the car when it came into Ogden handled the car between Ogden and Oakland. Petitioner contends that the Carrier violated the Agreement by: (1) permitting a porter to handle the car; and (2) failure to assign an extra Salt Lake Conductor when available or a regularly assigned conductor on layover when extra men were not available. The Carrier denies the alleged violation. It avers that the porters were qualified porters-in-charge who acted in that capacity between Ogden and Oakland; and, on their time sheets each claimed the porter-in-charge rate, and was paid that rate, Further, on all trains carrying one Pullman car the Carrier has an option which permits it to operate the car with a porter-in-charge.

The pertinent provision of the Agreement is Rule 64 (b) which reads, insofar as here material:

> "(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 . . ."

The theory of Petitioner's case is that the car, on each date specified in the claim, was handled by a porter who was not a qualified porter-in-charge; this was a violation of the Agreement; and, under the circumstances a Conductor should have been assigned to the car.

The parties are in agreement that under the circumstances Carrier had the option of operating conductors, porters-in-charge, or attendants in charge; and, Carrier admits it would have been a violation to operate with a porter handling the car. Therefore, the pivotal issue is whether qualified porters-in-charge handled the car. Petitioner had the burden of proving lack of qualification.

The Agreement does not define a porter-in-charge; and, no definition is found in our Awards cited by the parties or in the hearing transcripts of Emergency Boards quoted by Petitioner.

It appears that Petitioner unilaterally defines a porter-in-charge as an employe qualified for and assigned to that position who is equipped for operating in charge. But, even if we assume that this definition is supportable, Petitioner has failed to prove its case.

Petitioner states "The record is devoid of evidence that any of the porters were 'equipped for' operating 'in charge' on the dates specified, nor is there any probative evidence in the record that they were qualified as asserted by the carrier. Mere assertions are not proof as this Division has often held." We agree. But, the lack of such evidence does not prove Petitioner's case. It was Petitioner's burden, as the movant, to prove lack of qualification by a preponderance of evidence.

The only evidence adduced by Petitioner as to the lack of porter-in-charge qualification of employes, who handled the car on the dates specified in the claim, is a letter from one of them that on one of the dates he "did not have anny [sic] in charge equment [sic] with me."

In Award No. 9793 involving the parties herein, the same Agreement and Rules we said:

> "It would seem that the assignment of an employe to a job without proper equipment, as in this case would be the responsibility of the Carrier and not the employe or the Organization."

We find that Petitioner has failed to prove that the employes handling the car on the dates specified in the claim were not qualified porters-in-charge. We will deny the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1964.