Award No. 12963
Docket No. PC-14579

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, 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 Dallas District Conductors C. S. Heald, T. E. Talley, and S. T. Webb, that Rules 25 and 38 of the Agreement between The Pullman Company and its Conductors was violated when:

1. On October 23, 24, 25, and 27, 1962, two sleeping cars were operated on FW&DC train No. 8 out of Dallas without the services of a Pullman conductor.

2. Because of this violation, we now ask that Conductor C. S. Heald be credited and paid under the applicable rules for the service trip of October 23, Dallas to Amarillo, of 10:35 hours, and a deadhead trip Amarillo back to Dallas of 8:35 hours, or for a total of 19:10 hours.

3. We further ask that Conductor C. S. Heald be credited and paid for the service trip of October 24, 1962, under applicable rules, Dallas to Amarillo, of 10:35 hours, and for a deadhead trip Amarillo back to Dallas, 8:35 hours, a total of 19:10 hours.

4. We also ask that Conductor T. E. Talley be credited and paid under applicable rules for the service trip of October 25, 1962, Dallas to Denver, of 18:30 hours, and for a deadhead trip Denver back to Dallas, of 10:15 hours, or a total of 28:45 hours.

5. We further ask that Conductor Webb be credited and paid, under applicable rules, for the service trip of October 27, Dallas to Denver, of 18:30 hours, and for a deadhead trip Denver back to Dallas, of 10:15 hours, or a total of 28:45 hours.

Rules 6, 22, and the Memorandum of Understanding Concerning Compensation for Wage Loss are also involved.

The facts of this case require a denial award.

OPINION OF BOARD: The Fort Worth and Denver Railway Train No. 88 normally handled, prior to the dates involved in this claim, one Pullman Sleeping Car in service from Dallas, Texas, to Denver, Colorado, with a porter-in-charge in lieu of a conductor which is permissible under the Agreement. On October 23, 24, 25 and 27, 1962, Train No. 8 handled sleeping cars, owned by the Fort Worth and Denver Railway Company and not under lease to the Pullman Company, carrying military personnel at the request of the U. S. Government in addition to handling the sleeping car leased by the Pullman Company in its normal operation; the sleeping car owned by the Railway Company, not under lease to the Pullman Company, was manned entirely by Railroad employes. The Pullman Company, as disclosed by the record, did not make collections for space occupied in the car owned by the Railway Company though the Pullman Company did supply linen for that car without charge, it is contended.

From the foregoing facts arose the claim presented here that the Pullman Company violated Rule 64 (a) of the effective Agreement with the Order of Railway Conductors and Brakemen when the Fort Worth and Denver Railway Train No. 8 carried the sleeping car owned by the Railway Company in addition to the Pullman sleeping car without the service of a conductor.

Rule 64 (a) of the Agreement provides, as follows:

"RULE 64.

CONDUCTOR AND OPTIONAL OPERATIONS

(a) 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. . . ."

It appears from a reading of the record that under the Uniform Service Contract, which was entered into between the railroads and the Pullman Company as the result of a proceeding against the Pullman Company for a violation of the Anti-Trust laws of our Government, the Fort Worth and Denver Railway Company had contracted with the Pullman Company to operate sleeping cars over its lines which cars were owned by the Railway Company and leased by the Railway Company to the Pullman Company. If more cars were leased than were needed they could return such excess cars to the Railway Company. The "Wedena" and "Spanish Crest", cars used by the Railway Company in the present instance, had been taken out from under the car lease prior to October 1962.

Claimants contend that under the provisions of the Uniform Service Contract the Railway Company had not properly cancelled the contract with Pullman to furnish its service on sleeping cars and further that the Pullman Company under the provision of the Uniform Service Contract, having agreed to furnish these sleepers "Wadena" and "Spanish Crest" with linens were required to furnish all the services required including that of a conductor.

The respondent Pullman Company urge that inasmuch as there was only one Pullman car used at any of the times indicated in the claim there was no obligation on its part under the Agreement to furnish a conductor.

It was further contended by the Claimants that the arrangement by the Railway Company and Pullman Company was mere subterfuge to circumvent Pullman's responsibility to furnish a conductor as required by the Agreement, there being an extra sleeping car on the train. This, however, is mere conjecture on Claimants' part, there is nothing in the record to support such an accusation.

Nothing in the Uniform Service Contract changes the rules of Agreement between the parties to the instant dispute. The Uniform Service Contract was entered into between the Pullman Company and the railroads of the United States.

In the Report of Special Board of Adjustment No. 298 (a proceeding involving the New York Central Railroad Company and the Order of Railway Conductors and Brakemen) we note the following recital:

> "Under the pooling arrangement approved by the Interstate Commerce Commission, the Railroads, who had acquired title to the lightweight sleeping cars in use on their roads leased them back to the Pullman Company to perform the sleeping car services. It was Central's decision to withdraw from this pooling arrangement which triggered this dispute.
>
> The Organization intervened in the anti-trust case seeking to secure employe protective conditions incorporated in the decree approving the sale. **This prayer was denied, the court indicating that it was involved in an anti-trust proceeding and not in a labor hearing.** In the decree approving the sale, the court stated, 'This **order is made without prejudice to the rights of the employes of the Pullman Company under existing contracts and practices.**' Again in the 1947 proceedings before the Interstate Commerce Commission, **the Organization appeared and sought employe protective conditions in the order approving the pooling arrangement. The Interstate Commerce Commission refused to impose such conditions.**" (Emphasis ours.)

In addition, this Board is without authority to interpret the Uniform Service Contract between the Pullman Company and the railroads, to which Petitioner is not a party; the jurisdiction of this Board is confined under Section 3, first (i) of the Railway Labor Act to the interpretation of Agreements concerning rates of pay, rules or working conditions.

In Award 3691 (Miller) we find this Board reached the following conclusion:

> "We believe, however, that the Organization has brought its complaint to the wrong forum. This Board is confined by law to the settlement of disputes 'growing out of grievances or out of the interpretation or application of agreements.' The fundamental issue before us here is whether the Pullman agreement should be applied to certain operations of the DL&W. We believe we would be exceeding our jurisdiction to decide that issue."

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 does not have jurisdiction over the dispute involved herein; and

The Carrier did not violate any Agreement between the parties involved which this Board can find to have been effective and is a matter for further negotiation between the parties.

AWARD

Claim dismissed because the Board lacks jurisdiction to adjudicate it.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1964.