Award No. 13486

Docket No. PC-14962

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

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 extra Conductor F. A. Feehly, Washington District, that the Agreement between The Pullman Company and its Conductors was violated, with especial reference to Rules 64, 10, 25, and 38, when Pullman Cars Roton Point, Loading No. 401, Line Special, and Beaver Tail Point, Loading No. 402, Line Special, were in service, i.e., occupied by passengers and/or their possessions, in Washington, D.C., from 7:20 A. M., August 14, 1963 until 8:50 P. M., same date, without the services of a Pullman conductor

Because of this violation, we now ask that Conductor Feehly be credited and paid, under the terms of Rules 10 and 22, for 13:30 hours

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement, effective September 21, 1957, revised effective January 1, 1964, entered into by and between The Pullman Company, hereinafter referred to as Company, or Management, and the Order of Railway Conductors and Brakemen, Pullman System, hereinafter referred to as Employes, or Organization. Copy of this Agreement is on file with this Division of the Adjustment Board, and is by reference included in this submission as though set out herein word for word.

I.

Pullman sleeping cars, Roton Point, Loading No. 401, operating in Line Special, and Beaver Tail Point, Loading No. 402, operating in Line Special, originated in Lafayette, La., destined to Boston, Mass., occupied by the Acadians Party, via the SP-L&N-Sou-PRR and NYNH&H Railroads. These cars arrived in the Washington Station on Sou train #38, on August 14, 1963, in charge of Washington District Conductor W. T. Huntemann, into Washington, until 7:20 A. M., same date. The cars were then placed on a track off the station platform; the passengers leaving their possessions thereon.

Awards of the National Railroad Adjustment Board uniformly hold that the burden of establishing facts sufficient to require the allowance of a claim is upon the party seeking its allowance. Award 9788 (Fleming) of the Third Division, contains the following significant language:

> ". . . Furthermore, the claim must fail for lack of proof. Mere assertions and conclusions are not sufficient to substantiate a claim."

Also Third Division Award 7850 (Coffey) contains pertinent language on this point as follows:

> "The Statement of Claim amounts to no more than the allegation that the contract has been or is being violated. It is not evidence. The charge, as laid, must be supported by fact. On the theory that the one affirmatively charging a violation is the moving party, and, therefore, should be in possession of the essential facts to support the charge before making it, this Division of the Board is committed to the so-called 'burden of proof' doctrine. See Awards 3469, 5345, 5962, 6829, and 6839."

CONCLUSION

The Company has shown in this ex parte submission that Rules 64, 10, 25 and 38 of the Agreement have not been violated in the manner complained of. None of these rules required the assignment of Conductor Feehly to perform station duty in connection with cars ROTON POINT and BEAVER TAIL POINT, between hours of 7:20 A. M. and 8:50 P. M. on August 14, 1963. Also it has been pointed out that the practice of parking cars cut off a passing train, and laying over at a point without the services of a conductor is a practice of many years' standing in Pullman operations. This practice is confirmed by denial Award 4814 of the Third Division in a claim involving the non-assignment of a conductor to cars occupied by passengers and which were being switched from point to point within a terminal. It has been shown that the language of Rule 64 was not intended to change or abrogate nor did it change or abrogate the long established practice in connection with Pullman operations.

We have demonstrated that the claim in the instant dispute is for the creation of an unnecessary conductor assignment, where there is no work to be performed and where no benefit for time spent on duty could accrue.

Award 3759 of the Third Division has been shown to have no application to the facts of the instant case. The Award has reference to a switching movement of five cars in road service occupied by passengers and does not apply to a case which involves the parking of two Pullman cars without passengers and at a place inaccessible to passengers.

Since it has been shown that no rule of the Agreement required the assignment of Conductor Feehly under the facts of the case, the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the contention of the Claimant that two Pullman sleeping cars operating in Line Special, originated in Lafayette, Louisiana, destined to Boston, Massachusetts, occupied by the Acadians Party; that these cars arrived in the station at Washington, D.C., on August 14,

1963, in charge of Washington District Conductor, W. T. Huntemann; into Washington, until 7:20 A. M., the same date; that the cars were then removed from the incoming train and placed on a track off the station platform, the passengers leaving their possessions thereon; that the passengers had paid for Pullman space from Lafayette, Louisiana, and were entitled to use the cars for the entire trip; that the Company did not assign a Conductor to these cars while they were laying over in Washington until 8:50 P. M., August 14, 1963; that Claimant Feehly, an extra Conductor, was assigned to these cars at 8:50 P. M., August 14, up to 10:40 A. M., August 15, when they were turned over to a regularly assigned Conductor; it is the further contention of the Claimant that when the company failed to assign a Conductor to these Pullman cars laying over it violated the Agreement.

It is the contention of the Carrier that the two Pullman cars in question were vacated by passengers at 7:00 A. M., August 14; that at 7:45 A. M. these special service cars containing the effects of the passengers were switched to another yard and parked and stored; that after release of the porters assigned to them, the cars were padlocked; that they remained in the yard until placed in the station for occupancy by passengers at 9:00 P. M.; that the cars were taken out of service at 7:45 A. M., August 14; that they were not part of a train as they were moved to other tracks and parked and stored; that there were no passengers occupying the trains as it was padlocked; that there was no violation of the Agreement.

What we are primarily concerned with in this controversy is an interpretation of Rule 64, the pertinent part of which reads:

> "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, . . ."

The foregoing Rule has been under consideration by this Board in several prior Awards. Carrier maintains that these Awards are distinguishable and in some respects erroneous.

In Award 3579—Swain, passengers were en route on a train known as the Exposition Flyer from Oakland, California, to Chicago, Illinois-Pullman cars were removed from the train by switch engine and brought to D & RGW yard and then later brought back to the station for departure. All "through" passengers with their personal effects and belongings were allowed to remain in the cars between arrival and departure without a Conductor being assigned to the Pullman cars. The Company contended that these five cars when moved to the yard ceased to be a part of the train. It was held that the movement by the switch engine in moving these five cars to the yard would not keep these cars from being part of a train; that these Pullman cars were in service and all the time they were in Denver constituted part of a train.

In Award 4000—Carter it was held that the Company could not avoid its obligation under Rule 64 by renting the Pullman cars to the New York Central Railroad (in the instant case it is contended the two cars were stored by another Company).

Next we come to a consideration of Award 4814—Shake which the Company claims supports its position, presently. This Award cites Award 3579 with approval. This award can be distinguished from other awards herein cited as the occupants of the Pullman cars, involved in Award 4814, had

reached their destination at Philadelphia, Pennsylvania. In other awards cited the passengers were still en route.

In Award 10307—Michell, Pullman cars were cut-out at Charlotte to await arrival of a train. The cars were cut-out and laying over prior to the continuation by the passengers of their journey. The cars were occupied by passengers and their belongings. During the layover the cars were without the service of a Conductor. Award 3579 was cited with approval. It was held that the cars were part of a train to which they would later be attached.

Award 10373—McDermott affirms Award 10307.

Award 12592—Kane is the last prior award covering this subject prior to the present controversy. The facts involved in that award are more closely comparable to the facts presented here. The Company there contended that the Pullman cars were taken out of service in New York City, New York, that the passengers left the train, taking with them their possessions and the cars were locked and parked (as here). Porters were also released from service. It was held that the Company must assign a Conductor where there are two or more Pullman cars when they are occupied by passengers or by their possessions; that we cannot lose sight of the fact that the cars were being paid for and the passengers could have had access to them had they so desired; that if a car is being paid for, reserved for a group of passengers and that group can use the car, the car is in service.

Whether or not having to assign a Conductor to Pullman cars when they layover at a point in transit creates a hardship on the Company we cannot concern ourselves with in this dispute. Rule 64 is a rule of the Agreement on which other rules are necessarily predicated. This Rule has been interpreted in a number of awards of this Division heretofore cited and we cannot conclude that any of them are erroneous. These awards having arisen out of controversies between the identical parties we feel bound to follow them.

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 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 27th day of April, 1965.

CARRIER MEMBERS' DISSENT TO AWARD 13486, DOCKET PC-14962

(Referee Hall)

The Majority award herein is predicated in major part upon an acceptance of the conclusions reached in prior cases between the same parties regarding the application of the pertinent rule. We accept the fact that prior awards, particularly when they involve the same parties, warrant serious consideration and, if not palpably in error, may well be the basis of an award. However, a proper disposition of any case requires not only a study to determine the merits of prior awards but, equally important, an analysis of the factual situation under consideration in the light of the argued rule.

In the instant proceeding, the Majority award is deficient in both respects.

The pertinent rule requires that: "Pullman conductors shall be operated on all trains while carrying . . . more than one car. . . ." (Emphasis ours.) It does not require that Pullman conductors be assigned to cars. Thus, absent a finding of a train carrying more than one car, the elements of proof necessary to support the rule are missing and the rule cannot be applied.

While the Majority award makes no specific finding of the existence of a train carrying more than one car, its tone would seem to indicate acceptance of a theory of constructive attachment, as it were, to a train yet to be designated and thus, it implies, the stored cars become part of a train carrying more than one car. This strained and illogical reasoning, admittedly not initiated by the Majority herein but apparently acceptable to it, is not in conformance with accepted standards of rule interpretation—would it not be equally as logical to go one step further and find that since these cars are constructively part of a train to be designated later they are also constructively under the charge of the Pullman conductor on the train to be designated later, thus satisfying the requirements of the rule? Viewing the possibilities in this latter perspective highlights the incongruity of the earlier awards.

More properly, the Majority should have found the lack of a train carrying more than one car and should have concluded the rule not be applicable. It well could, and should, have discounted prior awards in terms herein suggested.

We dissent.

/s/ C. H. Manoogian
C. H. Manoogian

/s/ R. A. DeRossett
R. A. DeRossett

/s/ W. F. Euker
W. F. Euker

/s/ G. L. Naylor
G. L. Naylor

/s/ W. M. Roberts
W. M. Roberts