

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

**APPOINTED BY EXECUTIVE ORDER 10868 DATED
FEBRUARY 29, 1960, PURSUANT TO SECTION 10
OF THE RAILWAY LABOR ACT, AS AMENDED.**

**To Investigate an unadjusted dispute between the New York
Central System, a carrier, and certain of its employees
represented by the Order of Railway Conductors and
Brakemen, a labor organization.**

(NMB CASE No. A-5866)

**WASHINGTON, D.C.
JUNE 20, 1960**

(No. 127)

WASHINGTON D.C., June 20, 1960.

The PRESIDENT,
The White House,
Washington, D.C.

MR. PRESIDENT: The Emergency Board created by you on February 29, 1960, by Executive Order 10868, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate an unadjusted dispute between the New York Central System, a carrier, and certain of its employees represented by the Order of Railway Conductors and Brakemen, a labor organization, has the honor to submit herewith its report and recommendations based upon its investigation of the dispute.

Respectfully submitted,

LEO C. BROWN, S.J., *Chairman.*

JAMES P. CAREY, *Member.*

DAVID R. DOUGLASS, *Member.*

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I. BACKGROUND OF DISPUTE

Emergency Board No. 127 was created by Executive Order of the President on February 29, 1960, pursuant to the provisions of the Railway Labor Act, as amended, to investigate and report on an unadjusted dispute between the New York Central System, a carrier, and certain of its employees represented by the Order of Railway Conductors and Brakemen, a labor organization. Appointed by the President as members of this Board were Rev. Leo C. Brown, S.J., Chairman, and Messrs. James P. Carey and David R. Douglass.

The dispute to be investigated by this Board grows out of a decision of the New York Central System (hereinafter called NYC or the Carrier) to take over from the Pullman Company on July 1, 1958, the operation of sleeping cars on its own lines. The Pullman Company in its operation of NYC sleeping-car service had employed some 122 Pullman conductors (95 regularly assigned, 27 working off the Extra Board), who collected sleeping-car transportation, supervised porters, attended to passenger requests and complaints, and performed other related duties. In implementation of this operational change, NYC directed its train conductors to collect, after July 1, 1958, sleeping-car transportation, and to assume other duties formerly performed by the sleeping-car conductors. Thus, about 120 Pullman conductors faced displacement if NYC were to carry through its plans.

The Order of Railway Conductors and Brakemen (hereinafter called ORC&B or the Organization) is collective-bargaining representative both for Pullman conductors employed by the Pullman Company and train conductors employed by NYC. Following announcement of the contemplated operational change, numerous meetings were held between NYC officials and representatives of various labor organizations whose members employed by the Pullman Company were threatened with displacement. These labor organizations, apparently, sought an agreement from NYC that it would hire the people whom the Pullman Company laid off. ORC&B, it seems, was also insisting that the assignment to train conductors of duties formerly performed by Pullman conductors constituted the kind of change in working conditions which required negotiations looking to a change in the collective-bargaining agreement. NYC contended that it was entitled under existing agreements to require its train conductors to do whatever additional work might be involved.

This dispute remained unsettled, and ORC&B authorized strike of train conductors on the New York Central Lines East and the Boston-Albany District to become effective at 12:01 a.m., July 1, 1958, the date on which NYC was to begin its own operation of sleeping-car services. Thereupon NYC obtained a restraining order in the U.S. District Court for the Southern District of New York. During proceedings before the Court, the Carrier and the Organization, at the suggestion of the Court, agreed that the strike notice be withdrawn without prejudice, that the Carrier's submission to the National Railroad Adjustment Board seeking an adjudication of its right under its contract with ORC&B to require train conductors to collect all forms of transportation, including sleeping-car transportation, be withdrawn without prejudice, and that the Organization should serve a notice upon the Carrier under Section 6 of the Railway Labor Act of an intended contract change, and that negotiations between the Carrier and the Organization in respect of such notice should begin within 48 hours after receipt by the Carrier of a schedule of topics to be submitted by the Organization.

On July 10, 1958, the following notice was served on the Carrier:

To: The New York Central System

From: The Seven General Committees of Adjustment of the Order of Railway Conductors and Brakemen on the New York Central System

Written notice is hereby given to you of an intended change in the existing collective bargaining agreements affecting rates of pay, rules, and working conditions of train conductors in the light of the proposals announced by you with particular reference to the assumption of sleeping car duties by train conductors.

It is our understanding, confirmed by you before United States District Judge William B. Herlands, that negotiations will commence with regard to the foregoing matters within 48 hours after receipt by you of a schedule of topics to be discussed and negotiated.

We also understand that the pending motion for a preliminary injunction and all legal proceedings in connection therewith pending in the U.S.D.C., S.D.N.Y. will be discontinued and withdrawn without prejudice.

We hereby stipulate that the strike authorization heretofore called for July 1st, 1958, is hereby withdrawn without prejudice.

This notice was followed on July 16, 1958, with the following telegram from the General Chairmen of ORC&B representing train conductors of the New York Central System to Mr. Leo B. Fee, Vice President, Employee Relations, New York Central System:

The following is the initial schedule of topics to be discussed and negotiated pursuant to notice and agreement before the U.S. District Court in Case No. 135124: (A) When a train carries one or more sleeping cars an additional train conductor shall be assigned to perform the duties formerly performed by sleeping car conductors; (B) The rate of pay for conductors assigned in accordance with Item A will be the same as the passenger conductor rate; (C) All other provisions in the existing agreement will apply to conductors assigned in accordance with Item A. Suggest conference your office 10:00 A.M. Friday the 18th. Please advise if this meets with your concurrence.

Subsequent conferences between the Organization and the Carrier failed to achieve agreement, and, on August 12, 1958, ORC&B invoked the services of the National Mediation Board. When conferences under the auspices of this Board, held in October, November, and December, 1958, yielded no agreement, the Board suggested that the parties refer the dispute to a competent neutral person in the hope of finding a basis for an amicable disposition of all outstanding issues. The parties acceded to this suggestion, and, on April 8, 1959, entered into an agreement providing for appointment of the neutral by the National Mediation Board. That agreement provided in part:

The neutral person shall not have the right to adjudicate any of the issues presented, but it is understood that his recommendations will be used as a basis for reaching an understanding to adjust the dispute.

In execution of this agreement, Special Board of Adjustment No. 298 was created, and Mr. Francis J. Robertson of Washington, D.C. was named as the neutral and only member. This Special Board issued its report on September 29, 1959.

When no agreement was reached on the basis of the Robertson report, ORC&B insisted that the jurisdiction of the National Mediation Board had ended with appointment of the Special Board of Adjustment No. 298 (the Robertson Board). NYC disagreed, and the National Mediation Board, concurring with the Carrier, retained jurisdiction.

The Organization authorized, but at the request of the National Mediation Board deferred, a strike of NYC train conductors which was to become effective on February 22, 1960. When further conferences between the parties held in the Board's office in Washington on February 24 and 25, 1960, produced no tangible results, the strike was reset for March 2, 1960. Thereupon the President, on February 29, 1960, created this Emergency Board No. 127.

II. SUMMARY OF PROCEEDINGS OF EMERGENCY BOARD NO. 127

Emergency Board No. 127 after its first meeting in Chicago on March 14, 1960, recessed, at the request of the parties, until April 19, 1960. Between April 19 and April 29, 1960, the Board held eight days of hearings. Following the close of these hearings, the Board met with the parties both separately and jointly on May 2, 3, and 19, 1960, to explore the possibility of achieving agreement. These meetings were unproductive.

In the course of the Board's proceedings, the parties twice entered into stipulations in which they agreed that the time limit within which the Board must make its report to the President could be extended. The most recent of these stipulations requested an extension of time which would permit the Board to report not later than July 1, 1960. On May 25, 1960, the National Mediation Board advised the President of this request and recommended its approval. The President approved the request on June 1, 1960.

III. SCOPE OF ISSUES PRESENTED TO BOARD

The original Section 6 notice addressed by the Organization to the Carrier, dated July 10, 1958, spoke of an "intended change in the existing collective-bargaining agreements affecting rates of pay, rules, and working conditions of train conductors in the light of proposals announced by you with particular reference to the assumption of sleeping-car duties by train conductors." The supplementary notice, dated July 16, 1958, was more specific: "The following is the initial schedule of topics to be discussed and negotiated * * *: (A) When a train carries one or more sleeping cars an additional train conductor shall be assigned to perform the duties formerly performed by sleeping car conductors; (B) The rate of pay for conductors assigned in accordance with item A shall be the same as the passenger conductor rate; (C) All other provisions in the existing agreement shall apply to conductors assigned in accordance with item A. * * *"

This notice is clear. It represents a request by the Organization, at least as a basis for discussion and negotiation: (1) that an additional conductor be assigned on all New York Central trains carrying sleeping cars to perform duties formerly performed by Pullman conductors; (2) that the additional conductor so assigned receive the same rate of pay as the passenger conductor; and (3) that he be covered by all provisions of existing agreements. In the many conferences between the parties prior to appointment of Special Board of Adjustment No. 298 (the Robertson Board) and in the hearings before that Board the issues seem to have been changed.

That Board in its report said: "* * * While the Organization has not abandoned its demand that something should be done for the train conductor whose duties assertedly have been increased by the removal of the Pullman Conductors from the sleeping cars on Central's lines, its primary objective is to have Central, on its sleeping car operations, take over the Conductors formerly employed by Pullman in the operation of sleeping cars on Central's lines and to require Central to pay displaced Pullman Conductors who would not be absorbed under such an arrangement a co-ordination allowance (severance pay)."

When the dispute was heard by this Board, however, the Organization insisted that its position was consistent with the notice first served on the Carrier. The Organization stated: "The subject here involves just as you stated it * * * a moment ago: additional help on these trains. It involves the fact that substantial work has been added to the train conductor and that there are, in addition, equities which we feel should be explored with reference to the Pullman conductor." The reference in this statement was to an earlier question by the Chairman:

The Chairman: Am I correct in my understanding of the issues submitted, or of your view of the issues submitted, to this Board, namely, that it should consider the Organization's request for some additional help or relief for the train conductors in view of the added duties which have been placed upon them. This relief may take one of two forms, the hiring or assignment of men who were formerly sleeping-car conductors, or, as an alternative, the assignment of additional people from the personnel of train conductors.

Answer: That is a correct statement, Mr. Chairman.

Thus it is clear that the main issue before this Board is the Organization's request for additional help for the train conductor on trains carrying Pullman cars in view of his allegedly increased duties. Ancillary to this issue is the equitable question: Should whatever help is needed be supplied by NYC's hiring of displaced Pullman conductors?

IV. FINDINGS

A. THE INCREASED DUTIES AND RESPONSIBILITIES OF THE TRAIN CONDUCTOR

The amount of additional work imposed upon NYC train conductors was discussed at length in the hearings. The record indicates that prior to July 1, 1958, the duties of Pullman conductors working in equipment operated by the Pullman Company on NYC trains were: the collection and accounting for sleeping-car tickets and cash fares for sleeping-car accommodations, the reassignment of sleeping-car

space, attention to requests and complaints of sleeping-car passengers regarding equipment, personnel or handling, supervision of Pullman porters, policing the cars occupied by sleeping-car passengers, regulating the heating and cooling controls of such equipment, assisting the train conductor and brakeman in loading and unloading passengers and in "blocking-off" the train during stops to facilitate recognition of entraining passengers and collection of their transportation, and making reports concerning their work and unusual incidents to their employer, the Pullman Company.

The NYC train conductor prior to July 1, 1958, was responsible for the movement, government and safety of his train; for the supervision of all train personnel (including Pullman conductors and porters); and for determining that all employees under his supervision were qualified, competent, and in physical condition to perform their respective duties. The train conductor has been aptly described as the "captain of the ship"; he is in charge of the train and is, in effect, the commander of all its operating and service personnel. Prior to July 1, 1958, the NYC conductor was also responsible for collecting and accounting for all NYC transportation (including both tickets and cash fares) and for the preparation of various reports for the accounting and operating departments of the Carrier.

In addition to the duties and responsibilities just enumerated, the train conductor, since the July 1, 1958, changeover, has been required to perform the following work which previously was the responsibility of the Pullman conductor: collecting and accounting for sleeping-car tickets and cash fares for sleeping-car space, and reassigning of such space. He also lost the assistance of the Pullman conductor in loading and unloading passengers, in "blocking-off" the train, in policing the sleeping-cars, in regulating heating and cooling controls in such cars, and in attending to the requests and complaints of sleeping-car passengers.

The evidence makes it clear that collecting and accounting for sleeping-car transportation, inasmuch as it now is NYC passenger revenue, is a duty which may properly be assigned to the train conductor. Collecting and accounting for NYC tickets and cash fares has always been a duty of the NYC train conductor. The Organization has not, as a matter of fact, made any contrary assertion. Rather it has asked that an additional conductor, paid the same rate of pay as the train conductor, be assigned to help the train conductor with this work.

The additional duties required of a NYC train conductor, with respect to the handling of NYC sleeping-car passengers, are much

the same as if NYC were to inaugurate an entirely new type of passenger service in conjunction with its regular passenger-train operation. For example, if NYC were to inaugurate Vista-Dome service with all seats reserved and all passengers using such service required to present a separate ticket covering space in the Vista-Dome Car, the NYC train conductor clearly would be required to handle such passengers and collect such extra-fare tickets so long as they were in the account of NYC. Similarly, the changeover of July 1, 1958, was tantamount to addition by NYC of a new class of passenger service, and the work of collecting, accounting for, and reporting sleeping-car tickets (along with the handling of sleeping-car passengers) is clearly work assignable to NYC train conductors insofar as they are able to perform it.

This brings the Board to the question of the ability of the train conductor, on trains carrying sleeping-cars, to perform all of the work now assigned to him. For the NYC train conductors, when their position is analyzed, do not seem to be complaining that more work is now required of them, but that the amount of work now required is so great that the conductor cannot perform all of it, and that some work must go undone, and specifically that some transportation is not collected.

The record indicates that the Carrier is equally concerned with seeing that the train conductors' work is completed in an efficient manner. The Carrier, however, takes the position that whatever help the train conductor has needed has been provided. Furthermore, the Carrier has asserted that additional help will be provided in the future when conditions require it. Such assistance comes from the ranks of train conductors and bears the title of "Helper-Conductors."

Rule 108b, of the *Manual of Instructions to Passenger Conductors*, provides that whenever conditions of traffic are such that revenue is not fully protected the conductor shall submit a report to the company explaining the reasons therefor. Form APA 267 is used in making such reports.

Thus, the testimony indicates that Form APA 267 is the routine communication link whereby a conductor makes known to the Carrier the need for additional help on his train.

The record shows that train conductors have been filing fewer APA 267 forms since July 1, 1958, than previously, and that the number of such forms has continued to decline. ORC&B has suggested that the reason for the decline is fear of reprisal. There is, however, no evidence of an instance where a conductor suffered reprisal for filing a form APA 267. The Board has taken note of the fact that a conductor who failed to submit a form APA 267 when conditions warranted

would leave himself open to disciplinary action for failing to comply with the provisions of Rule 108b, referred to earlier.

While there is some evidence that in emergency situations train conductors, at least on some divisions, formerly had (but no longer have) the privilege of appointing, without prior approval by higher authority, conductors who happen to be "deadheading" as helper conductors, the evidence also indicates that the assignment of regular helper conductors has always been an unshared managerial prerogative on this property. There is no agreed-upon rule defining conditions which require the assignment of a helper conductor. The record indicates further that local chairmen normally make suggestions to the trainmasters relating to the need for establishing additional helper assignments. It was admitted, however, that the Organization's representatives did not determine the number of helper assignments. The Carrier always has had final decision in such matters.

It therefore appears to the Board: (1) that the added duties of train conductors incident to NYC's operation of its sleeping-car services is work which falls within the scope of a train conductor's assignment; (2) that, as result of the changeover, the duties of the train conductor on trains carrying Pullman cars have in some instances been made more burdensome and this more by reason of loss of the help of the Pullman conductor in the handling of sleeping-car passengers and the assignment and reassignment of sleeping-car space than in the added work involved in collecting sleeping-car transportation; (3) that there is, however, in the record no specific or convincing evidence that the train conductor's work is unduly burdensome or that he has not been afforded adequate help whenever the need for it has been made clear to NYC authorities.

B. THE QUESTION OF EQUITY RELATING TO THE PULLMAN CONDUCTOR

As has already been said, some 122 Pullman conductors were displaced from employment as a result of NYC's decision to operate its own sleeping-car service. The record discloses that the average age of this group was high, and that a large proportion of them at the time of the Robertson hearings had not found employment. The Organization has taken the position that in equity NYC has an obligation toward this group.

Such an obligation, this Board believes, would have to be based upon one of the three following considerations:

1. A contractual relationship between NYC and the Pullman conductors which created the obligation;

2. Some undertaking, explicit or implied, on the part of NYC to avoid the kind of situation which developed, that is, some guarantee of employment by NYC or of severance pay in lieu thereof;
3. Some obligation on the part of NYC to provide employment opportunities or severance pay for the Pullman conductors arising out of the fact that the operation of sleeping-car service on NYC lines had been, as the Organization maintains, a joint operation of NYC and the Pullman Company.

There is no evidence in the record, nor has it been maintained by the Organization, that any contractual relationship existed between NYC and the Pullman conductors. The Pullman conductors were employees of the Pullman Company.

There is no evidence in the record that NYC made any explicit undertaking to afford job protection to Pullman conductors in the event that it should undertake operation of its own sleeping-car service. An implied commitment on the part of NYC to afford such protection must be derived from records of proceedings in Federal Courts and before the Interstate Commerce Commission relating to the Pullman Company. For years prior to 1940, the Pullman Company controlled both the manufacture and operation of sleeping cars in the United States. On complaint of the Government, the Pullman companies were found guilty of an unlawful monopoly and ordered to separate the sleeping-car operations from their manufacturing operations. Pullman elected to dispose of the Pullman Company which was the operating organization. Among the bidders for the operating company was a group of railroads, of which NYC was one, which eventually acquired court-approved stock ownership of the Pullman Company. ORC&B intervened in proceedings before the Court seeking imposition of "protective conditions" which would prevent displacement of, or provide other protection for, Pullman conductors in the event that any member of the group of railroads purchasing the Pullman Company should terminate its contract with that Company by electing to provide its own sleeping-car service. The Court rejected these efforts on the ground that labor relations were not germane to the issues before it, but emphasized that in the event some railroad elected to operate its own sleeping-car service, nothing in the Court's decree prevented the Organization from bargaining with the railroad for employment of the displaced Pullman conductors. This Board can find no evidence that in these Court proceedings or elsewhere was there any undertaking by NYC to afford protective conditions for Pullman conductors.

The acquisition of the Pullman Company by the railroads and the program for sleeping-car operations constituted a pooling arrangement by the railroads which, upon application of the railroads, was approved by the Interstate Commerce Commission in 1947. In the proceedings before that Commission in which this application was considered, ORC&B intervened and requested the Commission, in its order approving the pooling arrangement then sought by the railroads, to impose conditions which would afford employment protection to the Pullman conductors. The evidence before this Board was that Mr. Jacob Aronson, Vice President and General Counsel of NYC, appearing before the Commission as a representative of the buying group of railroads:

1. Suggested to the Commission that in the event of a change in operations such as occurred in this case, ORC&B should bargain with the railroad for employment of the displaced Pullman conductors;
2. Expressed a belief that in such an eventuality "some sleeping-car conductor would be required" and that in that case, he "would be employed by the ABC railroad instead of the Pullman Company";
3. That, provided all organizations involved would consent the railroads would be willing to stipulate that a railroad which took over its own sleeping-car service would treat the sleeping-car employees in the same manner as previously treated by the Pullman Company.

This Board is of the opinion that these statements do not suggest a commitment by NYC to guarantee employment for Pullman conductors.

While the Board believes that the operation of sleeping-cars by the Pullman Company on NYC cannot correctly be called a joint operation, there was obviously a close working relationship between NYC and the Pullman Company. Moreover, the Board is of the opinion that termination by NYC of the contract under which Pullman Company operated sleeping cars on NYC lines was an eventuality which could have been foreseen, and that in view of long-established practices in the railroad industry regarding employee protection in the case of operational changes, some provision should have been made for the protection of the Pullman conductors.

This Board recognizes, however, that in the present state of the case the necessary parties are not before it to permit it to recommend compensatory relief for displaced Pullman conductors. Such relief should more properly stem from an arrangement between the Pullman employees and the Pullman Company.

Had NYC chosen or had the record in this case disclosed the necessity to assign a train conductor to specifically perform the duties formerly discharged by sleeping-car conductors, this Board recognizes that there would be a certain fitness or propriety in allocating to displaced Pullman conductors the resulting employment opportunities. As we have seen, the record does not disclose the necessity of such assignments. Consequently, any recommendation by this Board that NYC offer such protection to displaced Pullman conductors would be tantamount to a recommendation that it create unneeded jobs. The Board concludes that the equities of the situation do not justify such a recommendation.

V. RECOMMENDATIONS

The Board recommends that ORC&B withdraw its notice served July 10, 1958, under Section 6 of the Railway Labor Act, and its supplementary notice of topics for discussion dated July 16, 1958.

The Board further recommends that the Carrier and the Organization negotiate and agree upon a program for handling and settling a train conductor's request for help to assist him in properly completing his assigned work. In this connection the Board proposes that consideration be given by the parties to an agreement substantially along the following lines:

1. In the event a train conductor believes he is not able to properly perform his regular duties due to lack of help, he shall submit a written request to the division trainmaster, or such Carrier representative as shall be designated, for temporary or regular assignment of a helper conductor as circumstances may require.
2. If the request is denied and the appropriate General Chairman of ORC&B believes the request to be justified, he may submit the matter to the Carrier's principal divisional operating representative for his determination.
3. If the decision of the divisional operating representative is unsatisfactory to the General Chairman he may appeal to the Vice President, Employee Relations of the Carrier, or to his designated representative.
4. If the decision of the Vice President is adverse the matter may be submitted for final and binding decision of a neutral selected by the parties or appointed by the National Mediation Board and that his fees and expenses be borne by the parties.

The Board suggest that appropriate time limits be established for progressing each step of the recommended procedure.

Dated this 20th day of June 1960.

