

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and in behalf of Conductor L. H. Stuber, of the Philadelphia District (1) that during the assignment period of May 15, 1946, Conductor Stuber was entitled to the assignment due to report in Philadelphia at 6:00 A.M., May 16, 1946, for deadhead service to Fort Dix for Main 16287 en route San Antonio, Texas, which assignment was given to Conductor C. P. Carr in violation of Rule 38; and (2) that Conductor Stuber should be compensated for this trip in addition to all other earnings for the month.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in its service bearing effective date of September 1, 1945. Also, a Memorandum of Understanding, Subject: "Compensation for Wage Loss," dated August 8, 1945, attached as Exhibit No. 1. This dispute has been progressed up to and including the highest officer designated for that purpose, whose letter denying the claim is attached as Exhibit No. 2.

On May 15, 1946, Conductors P. E. Fritsche and L. H. Stuber stood first and second on the extra list of the Philadelphia District when Conductor Fritsche was given station duty assignment commencing at 8:40 P.M. that date. This assignment terminated at 1:40 A.M., May 16. At this hour Conductor Fritsche still had the lowest number of credited hours of service of the conductors on the extra list (See Rule 38, Paragraph (c)).

There was need for an extra conductor for station duty commencing at 5:30 A.M., May 16, 1946, and terminating at 2:30 P.M., that date. Conductor Stuber was assigned to this station duty service.

There was need for an extra conductor for deadhead service to Fort Dix for Main 16287 en route San Antonio, Texas, commencing 6:00 A.M., May 16, 1946. Conductor C. P. Carr was assigned to this service.

Conductor P. E. Fritsche made claim for compensation for the station duty service of which he was deprived, 5:30 A.M. to 2:30 P.M., May 16. This claim was allowed by The Pullman Company (See Exhibit No. 2).

Conductor L. H. Stuber has made claim for compensation for the 6:00 A.M. assignment for deadhead service to Fort Dix for Main 16287 en route San Antonio, Texas, of which he was deprived. This claim has been denied by The Pullman Company with the statement that "No responsibility beyond the adjustment of the initial error attaches to the Company." (See Exhibit No. 2.)

a double penalty be assessed against the Company for a single misapplication of Rule 38; namely, payment to Conductor Stuber as well as Conductor Fritsche, it is also the position of the Organization that the liability of the Company extends far beyond Conductor Stuber and that there may be no limit to the liability of the Company. Apparently, in the incident of May 15, the liability of the Company was limited only by the fact that the time limit of 60 days prescribed by Rule 49. Hearing and Decision expired before additional claims were filed.

Conclusively, the Company has violated the Agreement only with respect to the assignment of Conductor Fritsche, for which violation the Company compensated Fritsche. The Company, therefore, should not be required to compensate Conductor Stuber inasmuch as there was no misapplication of any rule of the Agreement in the manner in which Stuber was signed out.

CONCLUSION

The facts in this case as presented herein clearly support the Company's position. The Company maintains that there was no violation of Rule 38 of the Agreement with respect to the assignment of Conductor Stuber on May 15, 1946. When Conductor Stuber became due for assignment by virtue of his position on the extra board, the assignment furnished him was the assignment with the earliest reporting time. This procedure was in strict conformity with the provisions of the Agreement. In support of its claim the Organization points not to a violation of Rule 38 with respect to the assignment of Conductor Stuber but rather to the violation with respect to the assignment of Conductor Fritsche. On that violation the Organization rests its case. It attempts to disregard completely the fact that the Company admits its violation of the Agreement with respect to the assignment of Conductor Fritsche and the fact that the Company has paid the penalty prescribed for that violation.

The Conductor's Organization would be justified in presenting a claim in behalf of Conductor Stuber only if it could show a second violation of the Agreement on May 15, 1946. That, however, it cannot show. If the violation of the Agreement with respect to Conductor Fritsche is disregarded as it properly should be because the Company has paid for that violation, the Organization's case falls completely. The claim in behalf of Conductor Stuber should be considered on its own merits and not on the basis of a claim in behalf of another conductor. When this claim is so considered, it becomes apparent that the claim in behalf of Conductor Stuber should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Order of Railway Conductors makes this claim in behalf of Conductor L. H. Stuber. It claims Stuber was entitled to an assignment in Philadelphia at 6:00 A. M. on May 16, 1946, which assignment was given to Conductor C. P. Carr, and asks that Stuber be compensated therefor.

Rule 38 (a) of the parties' Agreement provides:

"(a) All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra conductors of that district when available, except as provided in paragraph (e)."

Rule 38 (c) provides:

"(c) Until service has been performed in the current month, the extra conductor with the least number of hours of service in the preceding month shall be called first. Then the conductor with the least number of hours of service in the current month shall next be called."

The Memorandum of Understanding between the parties, dated August 8, 1945, provides:

"Similarly, it is understood that if a Pullman conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the Agreement, effective September 1, 1945, and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month."

The record establishes that at signout time on May 15, 1946, in the Philadelphia District the following assignments were available:

1. Station duty—8:40 P.M., May 15, 1946, to 1:40 A.M., May 16, 1946.
2. Station duty—5:30 A.M. to 2:30 P.M., May 16, 1946.
3. Deadhead to Fort Dix for service on Main 16287 en route to San Antonio on May 16, 1946.
4. Deadhead to Fort Dix for service on Main 16288 en route to Fort Knox on May 16, 1946.
5. Station duty—3 P.M. on May 16, 1946.

There were available at signout time, insofar as it is here necessary to set out, the following extra conductors together with a statement of their hours of service:

P. E. Fritsche	98 hrs. 35 mins.
L. H. Stuber	108 hrs. 20 mins.
C. F. Carr	110 hrs. 10 mins.

These assignments, numerically listed in the order of their starting time, were available to the extra conductors as provided by Rule 38 (a) in the order as provided by Rule 38 (c). Fritsche, being lowest in hours of service, was, under Rule 38 (c), entitled to the first assignment from 8:40 P.M. on May 15, 1946, to 1:40 A.M. on May 16, 1946. He was properly assigned thereto and performed five hours of service thus giving him a total of 103 hours 35 minutes. He was still low in hours of service and, under a mutual interpretation of Rule 38 (c) to the effect that a double assignment was permissible, he was also entitled to the second assignment which was that of a station duty from 5:30 A.M. to 2:30 P.M. on May 16, 1946.

For some reason, not shown in the record, the signout clerk did not assign Fritsche to this work but assigned it to the claimant, L. H. Stuber. That was clearly in violation of these rules insofar as Fritsche was concerned. The Carrier, recognizing that fact, compensated Fritsche for the violation. It is the thought of the claimant that if Fritsche had been properly assigned to the second assignment that he would have received the third, which was assigned to G. P. Carr. He makes this claim based thereon.

Under the quoted rules of the Agreement it was the duty of the Carrier to assign the five available assignments in chronological order to the extra conductors available and, under Rule 38 (c), entitled thereto. Under these rules the Carrier was required to assign the first to Fritsche. This was properly done. It was then required to assign the second to Fritsche. That it failed to do and for which violation it has paid Fritsche. That violation, which caused this work to remain unassigned, related solely to Fritsche. The work thus remaining unassigned, it was the duty of the Carrier to assign it to the extra conductor available therefor and entitled thereto. That was the claimant and it was properly assigned to him. In so doing these rules were not violated for Stuber had no fixed rights in the third assignment until the first two had been assigned.

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 Employees involved in this dispute are respectively carrier and employees 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1948.