

Award No. 3833

Docket No. PC-3720

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 on behalf of the extra conductor of the Louisville District, entitled to the trip, that he be compensated for a deadhead trip Louisville, Ky., to Corbin, Ky., and for a service trip Corbin to Louisville, for which he was not used, when on March 1, 1946 Pullman cars John Fitch operating in Line 7205, and 7625, Line Special, were permitted to operate on L&N Train No. 24, from Corbin to Louisville without the service of a Pullman conductor in violation of Rule 64(a) of the Agreement of September 1, 1945.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and the Conductors in its service, bearing effective date of Sept. 1, 1945, and also a "Memorandum of Understanding," Subject: "Compensation for Wage Loss" dated August 8, 1945, which is 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.

RULE 64(a) reads:

"(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, except as provided in paragraph (c) of this rule."

RULE 38(a) reads:

"(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)." (Paragraph (e) not applicable.)

On February 28, 1946, tourist car No. 7625, Line Special, arrived at Corbin, Kentucky on L&N Train No. 32 from Atlanta. This car had been scheduled to move Corbin to Louisville on L&N Train No. 22, due to leave Corbin at 4:55 P.M. No. 32, due to arrive Corbin at 4:40 P.M. was late and the tourist car, therefore, missed connection with Train No. 22 and was moved from Corbin to Louisville March 1, in L&N Train No. 24 due to leave Corbin at 3:00 A.M. Train No. 24 regularly carried a Pullman sleeping car in service. The handling of this Pullman tourist car in that train, therefore, resulted in two (2) cars in service on Train No. 24 that date.

(Exhibits not reproduced.)

OPINION OF BOARD: The Order of Railway Conductors claims that an extra conductor of the Louisville District was entitled to a deadhead trip from Louisville, Kentucky, to Corbin, Kentucky, on February 28, 1946, and a return service trip between the same cities on L&N train No. 24 leaving Corbin at 3 A. M. on March 1, 1946. It asks that the extra conductor entitled thereto be compensated therefor.

Rule 64 (a) of the parties' Agreement provides:

"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, * * *."

Rule 38 (a) provides:

"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, * * *."

"Available," as used in Rule 38 (a), means that the conductor entitled to the assignment can be contacted and assigned and can reach the point where he is required to report by scheduled reporting time.

The record shows that L&N train No. 24 leaves Corbin for Louisville at the hour of 3 A. M. and regularly carries one Pullman car in service; that L&N train No. 32 from Atlanta, Georgia, is regularly scheduled to arrive at Corbin at 4:40 P. M. and makes connections with L&N train No. 22 leaving Corbin at 4:55 P. M. for Louisville. On February 28, 1946, train No. 32 from Atlanta was late in arriving at Corbin, reaching there at 5:40 P. M., and failed to make connections with train No. 22 which had already departed for Louisville. On that date train No. 32 carried Pullman tourist car 7625, Line Special, scheduled to move to Louisville in train No. 22. Because of the failure of train No. 32 to make connections with train No. 22 the Pullman tourist car 7625, Line Special, was attached to train No. 24 leaving Corbin at 3 A. M. on March 1, 1946, thus putting two Pullman cars in service in that train.

Since extra Pullman equipment in service was occasionally attached to train No. 24 at Corbin, the Louisville office of the Company regularly made inquiry in regard thereto by calling the office of the Superintendent of Transportation of the L&N Railroad in order to make extra conductors available, if necessary, Corbin being within the Louisville District. Such inquiry was regularly made about 3 P. M. and such a call was made on February 28, 1946, but the Company was informed that no extra equipment was scheduled to be in service on train No. 24 on March 1, 1946. The last train on which a conductor could have deadheaded to Corbin was No. 21 leaving Louisville at 6:15 P. M.

Rule 64 (a) required a conductor in service on train No. 24 on March 1, 1946, and, under Rule 38 (a), the Company was required to make a conductor available for that purpose. The record shows the Company did not know the extra Pullman car was attached to train No. 24 until it reached Louisville and the question arises, did the Company do all that it was required to do under these rules to ascertain if an extra conductor was needed and to make him available?

While the question is close, however, we think the Company did all that was reasonably necessary to ascertain if extra Pullman equipment in service was to be attached to train No. 24 on March 1, 1946, in order to provide an available extra conductor therefor, if necessary. Although subsequent events proved that an extra conductor was necessary on train No. 24, the Company never became aware of that fact until it was too late to provide such service. Nor does the record show that the Company could have obtained that information in time.

We think, under the circumstances, it cannot be said that the Company violated the provisions of Rules 64 (a) and 38 (a).

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 Company did not violate the rules of 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.