

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, 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 the extra conductor of the Los Angeles District available, and who should have been used, the amount earned by Conductor C. L. Henninger when, in violation of Rule 38 of the agreement effective December 1, 1936, he was assigned on February 28, 1945 to make a trip on Southern Pacific Trains Nos. 370 and 371, Line 3497½, Los Angeles to New Orleans and return.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between The Pullman Company and Conductors in its service, effective December 1, 1936. This dispute has been progressed in accordance with the agreement. The decision of the highest officer designated for that purpose denying the claim, is attached as Exhibit No. 1.

Conductor Henninger had held a regular assignment in Line 3497½. He had bid on and was assigned to a vacancy in Line 3463, effective February 25, 1945. He was due to depart from Los Angeles on this assignment on March 9, 1945. His layover in his previous assignment in Line 3497½ expired February 28, 1945. He was instructed to make another round trip in Line 3497½ in which he returned to Los Angeles on March 7, 1945. A Conductor from the extra list was not used for this round trip in Line 3497½. Conductor Henninger's assignment in this Line had terminated upon his assignment to the vacancy in Line 3463, February 25, 1945.

Hearing in connection with this claim was held in the office of District Superintendent Fitzgerald, The Pullman Company, Los Angeles, on April 4, 1945, and an adverse decision was received from him under date of May 17, 1945. Further hearing was held in Office of Superintendent Armstrong, The Pullman Company, San Francisco on June 30, 1945, and an adverse decision was received from him on August 11, 1945.

Rule 38 of the Agreement, effective December 1, 1936, appearing under the general caption "Operation of Extra Conductors" reads as follows:

"The extra work of a district shall be divided as nearly equal as possible between the extra conductors of this district with respect to equalizing their earnings, the conductor with the least hours of service in the current month to be called first. This rule shall not operate to prohibit the use of a foreign district conductor out of a station where he is available in service moving toward his home station; nor shall it abridge the right of the management to use

as Exhibit K. It will be noted from this letter that Mr. Vroman declined to consider on appeal the claim presented in behalf of Conductor C. P. Gannon of the Chicago Northern District on the grounds it was not included in the list of outstanding claims presented by Mr. Wise for settlement on August 25, 1945, and consequently was barred from consideration. The fact that Mr. Wise took no further action on the Gannon claim is proof that he understood that the settlements agreed upon between him and the Management's conference committee on August 25, 1945 disposed of all outstanding claims under the 1936 Agreement.

The Organization cannot successfully contend that the instant claim is one of the one or two minor cases which might have been overlooked by Mr. Wise at the time he prepared his list of claims for submission to Management's conference committee. In the first place, the Organization is requesting that a conductor of the Los Angeles District be compensated for 13½ days' pay. Assuredly, a claim for this amount can hardly be considered a minor claim. Additionally, had this claim been overlooked at the time he compiled his list of claims for settlement, Mr. Wise should have presented it to Management immediately after it came to his attention. Finally, when Mr. Wise did appeal this claim to Assistant to Vice-President Vroman (Exhibit E), which appeal was not made for over a period of one year after the meeting of August 25, 1945, he did not state that this claim was one of the claims which had been overlooked. Indeed, the record in this dispute contains no correspondence whatever from Mr. Wise taking issue with the decision denying the claim on appeal, which decision stated that the claim was barred from consideration (Exhibit G). Although Mr. Wise in subsequent discussion with Management representatives maintained that the meeting of August 25, 1945, was for the sole purpose of settling outstanding porter in charge claims rather than all outstanding claims, he was unable to explain why he had included for consideration and settlement claims other than those which involved the porter in charge question and why these claims were discussed and settled in the meeting of August 25. At this point, consideration should be given to the fact that Mr. Wise recently has progressed two porter in charge claims to the Board, both of which claims arose under the old Agreement.

Clearly, the General Chairman of the Order of Railway Conductors, Pullman System, is not only in error in progressing the instant claim to the Third Division but is, as well, attempting a thoroughly unprincipled repudiation of his own agreement. The Company is astonished that General Chairman Wise would appeal this case to the Board in complete disregard of his agreement with Management that the settlement of the cases submitted by him for consideration in August, 1945, would dispose of all outstanding claims. For the Board to allow this case to be considered at this late date in disregard of the agreement between Mr. Wise and the Company would be to undermine the Company's efforts to work out with the Organization on the property the solution to claims and would in the future discourage any attempt at the settlement of such claims.

Conclusively, the conductors' Organization should be held to its agreement with Management regarding the disposition of claims arising under the 1936 Agreement, and the instant claim should be dismissed by the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The submissions of the parties disclose that Conductor C. L. Henninger prior to the incident involved here had held a regular assignment in Line 3487½ Los Angeles, California to New Orleans, Louisiana and return. While in this assignment he bid for and was awarded a vacancy in Line 3463 effective February 25, 1945. His layover from his last trip in Line 3487½ expired February 28, 1945. He was instructed to and did make another trip in Line 3487½ after the expiration of his assignment therein. Without doubt this was done in good faith with an effort to protect Henninger against loss of time and income on account of transfer from Line 3487½ to Line 3463.

The Organization contends, however, that this was a violation of Rule 38 of the controlling agreement in that this trip belonged to the extra available conductor in the Los Angeles District. This claim is in behalf of the extra conductor for the amount earned by Henninger for the trip.

The then effective Rule 38 was the following:

"The extra work of a district shall be divided as nearly equal as possible between the extra conductors of the district with respect to equalizing their earnings, the conductor with the least hours of service in the current month to be called first. This rule shall not operate to prohibit the use of a foreign district conductor out of a station where he is available in service moving toward his home station; nor shall it abridge the right of the management to use regular conductors or extra conductors out of the regular order of their assignment in special movements when requested by patrons or required for the good of the service."

Subject to the rights of Henninger as an extra conductor, if in the circumstances he had any, there can be no doubt that the agreement was violated by sending Henninger out on Line 3487½ after the expiration of his regular assignment to that Line.

The carrier suggests that after release from Line 3487½ and until assignment to Line 3463 Henninger was an extra conductor and was entitled to work under the rules as such. The Organization, as indicated by J. F. Donahue, Local Chairman, Board of Adjustment, Division No. 719, O. R. C. Pullman System to L. R. Armstrong, Superintendent of The Pullman Company joins in this view.

As an extra conductor he would have been entitled to the run made on 3487½ only under the conditions set forth in the rule. It is not shown or suggested that he met these requirements.

In its submission the carrier suggests that in the event that this is to be held a violation of the rule and that an extra conductor is entitled to pay that the pay should be reduced by the amount, if any, the extra conductor received for other work during the period.

No showing having been made that other work was performed by the eligible conductor it is not deemed proper to discuss this question.

Stressed by the carrier in defense of this claim is a contention that there was an oral agreement between the representatives of the carrier and of the organization which prevents allowance of this claim.

The claimed agreement came about as follows: Prior to August 8, 1945, the parties negotiated a new agreement covering rates of pay and working conditions of Pullman conductors. This agreement was signed August 8, 1945. The effective date was September 1, 1945. On August 25, 1945, a carrier representative met with A. G. Wise, General Chairman of the Organization, for the purpose of working out a settlement of all outstanding claims which had arisen under the Agreement of December 1, 1936. Mr. Wise submitted a list of outstanding claims, and a settlement of those claims was decided upon with the understanding that no other claims would be progressed under the terms of the Agreement of December 1, 1936. It is to be noted that the instant claim is one growing out of the Agreement of December 1, 1936. It appears that as a part of the oral agreement that the Organization representative stated that there might be one or two claims other than those appearing on the list as first presented. Others were added and settled. Settlement was made on all claims on the list as first presented as well as with the others added. The instant claim was not in the list.

The claim here was first lodged with the carrier March 23, 1945 by letter from the Local Chairman of the Organization to the Superintendent of the district. A hearing was requested. A hearing was had April 4, 1945. The claim was denied by the District Superintendent May 17, 1945. On May 29,

1945 appeal was taken to the Superintendent. On August 11, 1945 following hearing the Superintendent denied the claim. On August 29, 1946 appeal was taken to the assistant to the Vice President. The claim was denied on this appeal October 31, 1946.

With these facts in mind we discover that this was not an agreement insofar as this claim is concerned in settlement of a claim or claims but was an agreement that a claim or claims would not be presented.

If we were to assume the validity of such an agreement there is serious doubt if it was intended to cover this claim since the carrier must be presumed to have at the time known about this claim. It had been partially progressed on the property.

We think, however, that we may not assume the validity of the claimed oral agreement in the respect contended for here but must hold that insofar as this claim was concerned, it had no binding force or effect.

We know of no rule in the general law controlling contractual relationships, the relation of employer and employe, or agency, or any provision of the Railway Labor Act, which would permit one acting in a representative capacity, in the absence of grant of authority so to do, to validly agree to an act the effect of which would be to destroy or take away the rights of the person represented. We think there is no such rule.

There is here no evidence of express or implied grant of authority of the Organization to agree to a destruction of the right of the proper extra conductor to receive pay for the trip in question. The oral understanding, if entered into, and the record indicates that it was, could not have the effect of defeating this claim.

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 has jurisdiction over the dispute involved herein; and

That the claim has been sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of April, 1948.