

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 Philadelphia District extra conductor entitled to the work, that Rule 38 of the agreement was violated,

1. When on November 9, 1946 Conductor E. J. Cleary was assigned to work Line 2346, Harrisburg to Williamsport, Pa. on November 11, 12, 13, 14 and 15, 1946, and,

2. When on November 15, 1946 Conductor L. C. Miller was assigned to work Line 2346, Harrisburg to Williamsport, Pa. on November 17, 18 and 19, 1946, and,

that the extra conductor denied this service on each of the dates named should be credited and paid for one minimum day deadhead, Philadelphia to Harrisburg, and for one and one-sixth (1 1/6) days' service in Line 2346, between Harrisburg and Williamsport, and for one minimum day deadhead Harrisburg to Philadelphia.

Claim is made that the vacancy in Line 2346, which was under advertisement, as provided in Rule 31, from November 9 to November 19, 1946 should have been filled during the advertising period by assigning the extra conductor on the Philadelphia District extra list each day, who was entitled to the assignment under the provisions of Rule 38.

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.

Hearing under the provisions of Rules 49 and 50 of the agreement was held in connection with this claim in office of District Superintendent D. F. Scudder, Philadelphia, Pa., on January 29, 1947. There were present:

Mr. J. A. Devlin, Asst. Dist. Supt. The Pullman Company.

Mr. E. H. Rothwell, Asst. to Supervisor of Industrial Relations,
The Pullman Company.

Mr. J. R. Deckard, Local Chairman Order of Railway Conductors.

The Company further maintains that there is no rule of the Agreement which limits the number of trips which an extra conductor may be required to make in an outlying run to fill a temporary vacancy of 31 days' duration or less. Additionally, we submit that the Organization's reliance upon Management's practice of filling a temporary vacancy in a run which has a district or agency as its home terminal from the extra board on a daily basis as support for its position in the instant dispute is not warranted since this practice is covered by signout procedure only and is not required in the rules of the Agreement. No rule of the existing Agreement contains a definition of an extra conductor's assignment. Therefore, since there is no rule which limits an extra conductor's assignment in a regular line to one round trip, there can have been no violation of the Agreement in the instant case. Finally, we have shown that the Organization, which by its own admission would not consent to a violation of the rules of the Agreement, has recognized in a case similar to the one now before us that no rule violation was entailed in filling an outlying run with one extra conductor for more than one round trip. In view of the multiple evidence that there was no violation of Rule 38, which was cited by the Petitioner, or of any other rule of the Agreement in the assignments of Conductors Cleary and Miller to service in Line 2346 on November 9 and 15, 1946, respectively, or in not filling Line 2346 from the Philadelphia District extra board daily during this period, it is apparent that the claim of the Organization is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier required Conductor E. J. Cleary of the Philadelphia District, to fill Line 2346 between Harrisburg and Williamsport on November 10, 11, 12, 13, 14 and 15, 1946. Conductor L. C. Miller of the Philadelphia District was required to fill the same Line on November 16, 17, 18 and 19, 1946. These assignments were made while a new conductor operation was being bulletined between Harrisburg and Williamsport. There being no conductor roster at either terminal of the operation, and the Philadelphia District therefore having jurisdiction, the extra conductors were supplied from that point. Conductor Cleary deadheaded to Harrisburg, filled Line 2346 on the six days specified and deadheaded back to Philadelphia. Conductor Miller filled the Line on the four days specified in his claim in the same manner. Each was paid $7\frac{1}{2}$ hours for the deadhead trip into Harrisburg, $1\frac{1}{6}$ days for each round trip made in Line 2346, and $7\frac{1}{2}$ hours for the deadhead trip back to Philadelphia. That claimants were properly assigned on their first day is conceded. The Organization contends there was a violation of Rule 38 of the current agreement in that the extra conductor next out in Philadelphia after the first day of each assignment should have been assigned the run and paid $7\frac{1}{2}$ hours for each deadhead trip each day.

The applicable portions of Rule 38 provide:

"(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)."

"(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."

It will be observed that the foregoing rules are silent as to the length of the assignment of an extra man. Historically, the rule was an attempt to equalize the work among extra conductors. In this respect, extra work will go to the extra conductor with the least number of hours in the preceding month until service has been performed in the current month. When service has been performed in the current month, the conductor with the least hours in that month shall be called. Conductors Cleary and Miller were admittedly called in conformity with this rule. The question for decision is for how long were they called?

We think the rule indicates an intent to equalize extra work among extra conductors. Where the Carrier can carry out the intent of the rule without doing harm to its own interests, it is obligated to do so. Pursuant to this intent of the rule, the practice has been followed where the extra work arises at a point where a seniority roster is maintained, to assign the work each day on a trip basis. This is not done in furtherance of any specific language of the rule. It is done in compliance with the historical intent of the rule to equalize the work of extra conductors where the Carrier is not prejudiced thereby.

Where the extra work arises at a point where no seniority roster is maintained and it becomes necessary to provide extra conductors from a seniority roster at a distant point, the rule does not require that the same practice be followed. The reason is best illustrated by the claim here made. The Organization contends that a different conductor should be assigned each day and paid a minimum day in deadheading from Philadelphia to Harrisburg, 1-1/6 days for each trip, and a minimum day for deadheading back to Philadelphia, a total of 3-1/6 days' pay for each day of the ten day bulletining period. Clearly the Carrier cannot apply the practice followed when the work originates at a point where a seniority roster is not maintained, without doing harm to its own interests. Consequently, the assignment under those circumstances can be made to accomplish the intent of the rule only by giving the work to the extra conductor with the least hours at the time the work arises. If the work is such that it need not be bulletined, the assigned extra conductor may perform it all unless or until he comes into conflict with some other rule of the controlling agreement.

That Conductors Cleary and Miller had priority to the work on the date of their assignment is not disputed. Under the views we have expressed, the Carrier has properly assigned the extra work of this operation insofar as other extra conductors on the seniority roster in Philadelphia are concerned. The claim made by the Organization is without merit.

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 claimed violation is not sustained by the record.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1948.