

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Jay S. Parker, Referee

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**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 Conductor J. W. Marion of the Jacksonville District, who on the morning of August 10, 1947, was working out of the Tampa District on a temporary transfer, that a violation of Rule 38 of the Agreement between The Pullman Company and its Conductors occurred, when on August 10, 1947, the Carrier failed to assign Conductor Marion to operate on A.C.L. Extra 423, Tampa to MacDill Field, Florida. It is now asked that Conductor Marion be credited and paid for this trip to which he was entitled under the rules of the Agreement.

**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.

Rule 42 of the Agreement reads:

"TEMPORARY TRANSFERS. When conductors are transferred to other districts to work on seasonal runs or other temporary assignments, they shall retain their seniority in the district from which transferred and shall rank as junior to all conductors in the district to which transferred and shall not accumulate seniority in such district, but shall exercise seniority rights among conductors so transferred according to their seniority dates in their home districts.

"When conductors are to be transferred they shall be privileged to transfer in accordance with their seniority in the district from which transferred. A regularly assigned conductor so transferred shall be required to resign his assignment as provided in Rule 32, but shall be exempt from its 15-day clause."

Rule 38 (a) (Operation of Extra Conductors) of the Agreement reads:

"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)."

Also, the case identified as First Division, National Railroad Adjustment Board, Docket No. 19132, Award 10743, is in point. The Board held that the validity or invalidity of the claim depended upon whether or not the claimants were "available" to perform the service for which claim was made, as follows:

"The dispute herein turns upon availability of claimants to have performed the service forming basis of claim asserted herein. It is accordingly held if it be shown claimants could have been made available in accordance with the applicable articles of agreement to have performed the service for which claim is here made, claim is held to be valid; otherwise not."

(See also Award 10744, Docket No. 19133.)

Conclusively, the situation arising in the Union Station in Tampa on August 10, 1947, was an emergency situation and resembled in every pertinent respect the claims adjudicated under the Awards above cited. The records of the National Railroad Adjustment Board are replete with Awards in which the Board has held that the Carrier should not be penalized in emergency cases in which the Carrier had no opportunity literally to comply with the rules. In addition to the Awards cited above, the Company makes reference to First Division Awards 43, 2553, 2583, 4863, 4862, 6459, 7184, and 8504.

#### Conclusion

In conclusion, the Company has shown that the inability of Conductor Travis to protect his assignment to Main 3582, ACL train No. 423, created an emergency condition in Tampa on the morning of August 10, 1947. Although the Company attempted to make Conductor Marion, the only unassigned extra conductor in Tampa on the morning of August 10, available for that assignment, he could not be located. Consequently, Management assigned Conductor Muller, who arrived in Tampa on the morning of August 10 on ACL train No. 33, to the emergency assignment. Clearly, Conductor Marion was not "available" for service as that term is defined and interpreted in Rule 38 of the Agreement. The argument of the Petitioner that Marion was available and should have been assigned to the operation is without foundation in fact. Further, the Company's position in this dispute is amply supported by numerous awards of the National Railroad Adjustment Board. The claim is without merit and should be denied.

**OPINION OF BOARD:** The facts which are not in serious dispute appear in the respective submissions and can be found there if desired.

It is the Organization's position that Rule 38 of the current Agreement was violated by the Carrier when it failed to assign Conductor Marion to operate on A.C.L. Extra 423, Tampa to MacDill Field, Florida, and that he should now be credited and paid for such trip.

Provisions of Rule 38 applicable to the subject in question read:

"(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, \* \* \*."

\* \* \* \*

"(f) \* \* \* A conductor who misses a call shall be assessed the average daily hours only once each day and shall not be called again that day unless all available local extra conductors have been used. \* \* \*."

The Company conceded Marion would have been entitled to the extra work involved had he been available but asserts he was not. The facts on which it bases its position can be summarized as follows:

On August 9, 1947, there were four vacancies to fill at Tampa and four conductors on the extra board. At that point sign-out time is 2 to 3 P. M. and extra conductors are given assignments for known vacancies for the next 24 hours. Conductor Travis, who stood first out, was called but was unable to accept the 6:50 P. M. August 9 assignment. However, he informed the clerk he would be available on August 10. The clerk filled the three vacancies due out on the evening of August 9 with conductors next in line and then assigned Travis to the MacDill Field Movement scheduled for August 10 at 9 A. M.

Conductor Marion arrived at Tampa deadhead about 7 A. M. on August 10 and checked in at the sign-out office about an hour later. He was told there were no assignments open. He then left that office. A few minutes later, at about 8:30 A. M., Travis notified the Company he would be unable to report for the MacDill Field Movement. The Asst. Superintendent then made an effort to locate Marion. He looked in the station concourse, waiting room and restaurant but failed to find him. He did not attempt to call him because he had no telephone. At 9:40 A. M. another extra conductor (Muller) arrived in Tampa. The MacDill Field assignment was due out at 9:55. Having failed to locate Marion and there being no other extra conductors available, Muller was given the assignment.

The two grounds relied upon by the Organization as requiring the sustaining of its claim will be considered in inverted order of their importance.

It is first urged that in view of the quoted portion of Rule 38 (f) the Company had no right to call Travis the second time on August 9 and give him the August 10 assignment but was required to wait until the morning of the latter date to ascertain whether there might be other conductors in line for the vacancy. That position requires too strained a construction of the rule and is not tenable. In our opinion the word "used" must be regarded as meaning "assigned". The construction placed upon such term by the Organization would mean that the Company would have to wait in many instances until shortly before an operation was to begin before it could call a conductor a second time on the same day, an impractical result and one certainly not contemplated by the parties at the time the Agreement was executed. Since all available conductors had been assigned when Travis received his second call there was no violation of the rule in giving him the MacDill Field assignment.

The Organization's principal claim is that under the facts and circumstances disclosed by the record Marion was available within the meaning of that term as used in Rule 38 (a). Otherwise stated, its position is that he was on the ground and that the Company did not exercise good faith and diligence in attempting to locate him. Nothing is to be gained by reviewing the evidence pertaining to that question. It will suffice to say that we have carefully reviewed the record and are convinced, when due consideration is given to the fact there was less than an hour after Travis reported not available to obtain another conductor for the MacDill Field Movement, the Company's representatives made a reasonable effort to locate Marion and that under all the surrounding facts and circumstances he was not available for the assignment at the time it was given to Muller.

**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 Agreement in failing to assign Conductor Marion to the operation described in the Opinion.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.