

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting—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 E. W. Gillan of the San Antonio District that The Pullman Company violated Rules 38, 64, and Memorandum of Understanding Concerning Assignment of Extra Conductors, of the Agreement when:

1. On May 18, 1948, Extra Conductor Gillan was not assigned to two cars, Glen Lake A-1 and Brahms A-2 when these cars in service were laying over at San Antonio, Texas, after arrival on Missouri Pacific Train 22, enroute Mexico City to Rochester, N. Y., and not assigned to road service trip from San Antonio to New Orleans, Louisiana, in Southern Pacific Train No. 6.
2. As Conductor Gillan has been compensated for the station duty assignment to which he was entitled we now ask that he be paid for the road service trip San Antonio to New Orleans in Train No. 6.

EMPLOYEES' 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, revised Effective January 1, 1948, which includes a Memorandum of Understanding Concerning Assignment of Extra Conductors dated September 8, 1947, effective September 22, 1947, and shown at page 58 of the Agreement. There also is in evidence 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 18, 1948, Conductor Gillan stood first out on the extra conductors list at San Antonio and was available for service at 8:05 A.M. when two Pullman cars in service, namely the Glen Lake A-1 and Brahms A-2, arrived in San Antonio on Missouri Pacific Train No. 22 enroute from Mexico City to Rochester, N. Y. These two cars were scheduled for movement from San Antonio to New Orleans, Louisiana, in Southern Pacific Train No. 6 departing from San Antonio at 2:55 P. M., May 18, 1948.

Upon arrival at San Antonio the Pullman conductor in charge of these cars while in Missouri Pacific Train No. 22, advised the District Superintendent that the two cars were at the Missouri Pacific station and would

period, May 18. The Company has compensated Conductor Gillan for that violation. There was, however, no violation of Rule 64 in connection with the service trip on S. P. train No. 6 from San Antonio to New Orleans. Conductor Miller properly was assigned to this service. As the Company has shown on pages 6-7 of this ex parte statement, there has been no violation of the **Memorandum of Understanding Concerning Assignment of Extra Conductors** since Conductor Gillan was not entitled to the road service assignment for which claim is made inasmuch as he did not perform the station duty on cars GLEN LAKE and BRAHMS.

The **Memorandum of Understanding** covering compensation for wage loss, as interpreted by Award 3831 of the Third Division, contemplates that **Management will pay only one penalty for a single violation of the rules of the Agreement**. If the violation of the Agreement with respect to the non-assignment of Conductor Gillan to station duty 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 Gillan for the road service trip should be considered on its own merits and not on the basis of the claim for station duty. When this claim is so considered, it is clear that Gillan was not entitled to the service trip on S. P. train No. 6, and the claim in his behalf should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. The Company admitted a rule violation in its failure to assign a tour of station duty to Conductor Gillan on May 18, 1948 and has paid him for such time. During the period of time that he should have been on station duty an unexpected road service assignment occurred which, under Point 1 of the **Memorandum of Understanding Concerning Assignment of Extra Conductors** dated September 8, 1947, was a required assignment to him if he had been on such station duty. The claim is for pay for such road service.

Claims of this nature are based upon a **Memorandum of Understanding**, **Subject: Compensation for Wage Loss**; dated August 8, 1945 which 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. * * *"

It would appear that the word "trip" therein must be considered as synonymous with work or assignment since the parties consider that it covers loss of station duty as well as trips. It is clear that the work or assignment he lost was a tour of station duty. Does that include the road service claimed? In our view it does because under Point 1 referred to it is automatically given to the one on station duty and the only reason that Gillan lost such work was the failure of the Company to assign him to the tour of station duty.

The Company claims that the Organization has agreed that a lost trip shall not include return service except on an assigned round trip or deadheading back and that similarly lost station duty should not include road service occurring. At the end of a one way trip assignment the Company has an option under the rules to assign the conductor to service if available, to deadhead him back or to hold him for service. There is no such option here since by Point 1 the conductor on station duty is automatically given the road service occurring and it accrues to and becomes an integral part of the station duty assignment.

The Company claims that our Award No. 3831 bars this claim but that award involved claims by two conductors because of one rule violation which is not the situation here. Likewise no double penalty is involved here as claimed by the Company since the only question before us is the amount of compensation due to one conductor for one violation of the rules. It is our view that one should be compensated for all loss which flows directly or automatically from the violation of a rule by the Company.

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

The Company violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1949.