Award No. 5587
Docket No. PC-5549

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Claim of the Order of Railway Conductors, Pullman System, for and in behalf of Conductor H. B. Jackson, Dallas District, that:

1. Under date of September 25, 1949, Conductor Jackson was given an assignment, under the provisions of Rule 38 of the Agreement, for an extra service trip on FWDC Train No. 8, Dallas to Amarillo, Texas, released 15 minutes after arrival Amarillo, and for a deadhead trip on FWDC Train No. 7 Amarillo to Dallas, reporting Amarillo 9:50 A. M., Sept. 26, 1949. Conductor Jackson was removed from this assignment en route (Fort Worth) in violation of Rule 38.

2. We now ask that Conductor Jackson be credited and paid for the remainder of the assignment, i.e., an extra service trip Fort Worth to Amarillo, on FWDC Train No. 8, and for a deadhead trip of not less than 7:30 hours, Amarillo to Dallas, reporting Amarillo 9:50 A. M. Sept. 26, 1949, because of this violation.

3. We also claim that when Conductor Jackson was removed from his assignment and Conductor A. J. McCord, San Francisco District, was given the assignment on FWDC Train No. 8, Fort Worth, Texas to Amarillo, thence deadhead Amarillo to San Francisco, paragraph (e) of Rule 38 was violated.

EMPLOYES' STATEMENT OF FACTS: At the time this dispute arose, there was in evidence an agreement between The Pullman Company and Conductors in the service of The Pullman Company, dated September 1, 1945, revised January 1, 1948. Present agreement dated January 1, 1951.

This dispute has been progressed in accordance with the agreement. Decision of the highest officer designated for that purpose, denying the claim, is attached, as Exhibit No. 1.

Copy of Memorandum of Understanding, subject "Compensation Wage Loss" dated August 8, 1945, is attached as Exhibit No. 2.

The essential facts in this dispute are, as follows:

Conductor Jackson holds seniority in the Dallas District as of August 20, 1926. He was operating on the extra board on September 25, 1949, and was issued the following assignment slip, as provided in Rule 38 (b):

since no railroad offers through Pullman service between Fort Worth and San Francisco. Thus, Examples 1 and 2 are applicable here only in so far as they show that more than one direct route may exist between Fort Worth and San Francisco for the purpose of Rule 38 (e).

Questions and Answers 4 and 5 lend further support to Management's position in this dispute in that they explain what constitutes a direct route and establish that the service to which McCord was assigned was over a direct route to his home station. Appendix 5, the sketch illustrating Question and Answer 4, which specifies that a Pennsylvania Terminal District (New York City) conductor available in Chicago shall not be used in service via Washington on the Pennsylvania Railroad, shows clearly that the Pennsylvania Railroad is not a direct route from Chicago to New York via Washington because assignment of the conductor to the Harrisburg-Washington leg of the trip would involve circuity of operation. Similarly, Appendix 6, the sketch illustrating Question and Answer 5, shows that the New York Central Railroad is not considered a direct route from Chicago to Boston via New York City because a conductor being returned to Boston from Chicago would deviate from a direct route when he operated from Albany to New York. Comparison of these sketches with the sketch on page 10 of this ex parte statement illustrating the actual operation of Conductor McCord shows beyond doubt that Conductor McCord properly operated on a direct rail route toward his home station determined in accordance with the requirements of a direct route spelled out by Questions and Answers 4 and 5.

CONCLUSION

In this submission The Pullman Company has shown that the assignment given to Conductor McCord was proper under Question and Answer 2 of Rule 38, which Question and Answer permits Management to use a foreign district conductor in service to or from an intermediate point on a direct rail route toward the conductor's home station. The route over which Conductor McCord operated from Fort Worth to Amarillo via the F.W.&D.C. Railway and from Amarillo to San Francisco via the Santa Fe Lines is shorter both in miles and in the hours necessary for the trip than the route which the Organization contends is the one direct rail route from Fort Worth to San Francisco. Directionally, the route over which McCord operated is not circuitous. It is a recognized ticketing route from Fort Worth to San Francisco. Therefore, there can be no violation of Rule 38 (e), as alleged by the Organization.

The Board should render an Award recommending that the Organization accept the compromise settlement offered by the Company on January 26, 1951 (Exhibit E).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, an extra conductor holding seniority in the Dallas District, was assigned to service on FWDC Dallas to Amarillo return deadhead on FWDC No. 7. Upon arrival of his train in Fort Worth he was removed from his assignment and replaced by Conductor McCord. The latter was a San Francisco Conductor who was on assignment to a Shrine Special which was destined for Dallas. The cars of Conductor McCord's train were expected to be consolidated with those of a second section of the Shrine Special and therefore upon arrival in Fort Worth in asserted compliance with Rule 38 (e) he was assigned to the run from Fort Worth to Amarillo. It later developed that the cars of McCord's train were not so consolidated. Hence Carrier admittedly had no right to annul that part of Conductor McCord's assignment from Fort Worth to Dallas. No claim has been made by Conductor McCord.

Under Rule 38 of the applicable Agreement management has the right to annul an extra conductor's assignment when (1) the cars in his charge are consolidated with cars of another train or trains, (2) when a foreign

district conductor is available for service as provided in paragraph (e) which latter paragraph reads as follows:

> "(e) This rule shall not operate to prohibit the use of a foreign district conductor out of a station in service moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station."

While the parties have gone into considerable discussion with respect to whether or not Conductor McCord was used out of a station (Ft. Worth) in service moving in a direct route toward his home station (San Francisco) we do not believe that a resolution of that issue is necessary to a disposition of this claim. The Carrier has admitted that it had no right to use Conductor McCord in this particular service because of non-compliance with condition (1) above indicated. The Claimant was improperly denied his right to continue in service to Amarillo because the work was given to another not entitled to it. Under the Memorandum of Understanding dated August 8, 1945, it is apparent that he is entitled to payment for the trip lost in addition to all other earnings for the month. It follows that items (1) and (2) of the claim should be sustained. Item (3) becomes academic in view of this finding.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim disposed of as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of December, 1951.