

Award No. 5591

Docket No. PC-5670

**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: The Order of Railway Conductors, Pullman System, claims for and in behalf of Conductor R. J. Harpster, Minneapolis District, that he was not credited and paid "Held-for-Service Time" as outlined below, in violation of Rule 9 of the Agreement between The Pullman Company and its Conductors.

We further contend that Conductor Harpster was not issued a temporary transfer from Minneapolis District to St. Paul District, in accordance with Rule 42 of the Agreement, and we now ask that he be credited and paid "Held-for-Service Time," as provided in Rule 9, as follows:

1. From 11:20 P.M., May 26, 1948, until 7:05 P.M., May 28, 1948, held-for-service time, 30 hours.
2. From 10:55 P.M., June 1, 1948, held-for-service time until 9:00 P.M., June 5, 1948, total of 60 hours.
3. From 1:30 P.M., June 9, 1948, until 9:25 P.M., June 11, 1948, held-for-service time, 37:55 hours.
4. Conductor Harpster was released from road service in St. Paul, 10:30 A.M., June 15, 1948, and next reported for road service, 8:30 A.M., June 19, 1948, due 52 hours held-for-service time.
5. Due held-for-service time as provided in Rule 9, 1:40 A.M., June 22, 1948, until 7:05 P.M., June 22, 1948, total 15 hours.
6. Due held-for-service time 1:40 A.M., June 24, 1948 until 7:05 P.M., June 25, 1948, 15 hours.
7. Due held-for-service 1:40 A.M., June 28, 1948, until 7:05 P.M., June 28, 1948, total 15 hours.

EMPLOYES' STATEMENT OF FACTS: There is 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. This Rules Agreement will be considered a part of this Statement of Facts.

CONCLUSION

In this submission The Pullman Company has shown that the sole restriction placed upon Management in the temporary transfer of conductors is that the conductors must be transferred in accordance with their seniority. The Rule sets forth no formal procedure to be followed. Conductor Harpster was improperly transferred from Minneapolis to St. Paul during the period May 24-31, inclusive, because conductors senior to him desired temporary transfer and were entitled to be transferred before Harpster. However, on and after June 1, 1948, Conductor Harpster was the senior conductor who desired to fill the vacancy for temporary transfer advertised on June 1. Therefore, his transfer after that date was in accordance with the provisions of Rule 42.

The Board should render an Award recommending that the Organization accept the settlement proposed by the Company on April 30, 1951 (Exhibit D).

(Exhibits not reproduced).

OPINION OF BOARD: On May 21, 1948, Carrier posted a notice to conductors in the Minneapolis Division advising that two conductors were required in St. Paul on temporary transfer and that any conductors wishing to transfer were to advise in writing within ten days. On May 24, 1948, Claimant advised Carrier in writing that he wished to take a temporary transfer to St. Paul. As of May 24 Claimant commenced work in the St. Paul District. Before the expiration of the ten-day period two conductors senior to Claimant indicated their desire to take temporary transfer to St. Paul and, effective June 1, 1948, they were so assigned. June 1, 1948, another notice was posted to conductors in the Minneapolis District advising that there was a vacancy for one conductor for temporary transfer to St. Paul and that any conductor wishing to make the transfer should make written request within ten days. On June 11, 1948, Carrier posted a notice that Vacancy Bulletin dated June 1 for one conductor for temporary transfer to St. Paul had been awarded to Claimant.

The Employees contend that Claimant's status during the period of his service at St. Paul was that of a "borrowed" conductor because he was not temporarily transferred to St. Paul in accordance with applicable rule. Consequently, they assert, Claimant should have been paid under the provisions of Rule 9(b) (held away from home terminal). Carrier contends that Claimant was temporarily transferred to St. Paul in accordance with Rule 42 governing temporary transfers.

Rule 42 reads as follows:

"RULE 42. 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."

It is to be noted that Rule 42 makes no provision for the bulletining of temporary transfers. The rule merely requires the Carrier to grant the privilege of making a temporary transfer to the conductors in the district from which transferred in accordance with their seniority in that District. The rule is silent with respect to the mechanics or means by which Carrier

is to determine which of the conductors in the transferring district wishes to exercise the privilege. The bulletin rule of the Agreement does not require the bulletining of temporary transfers. However, it is obvious that Carrier at least in this instance chose the means of bulletining to ascertain the desire of the conductors who would be privileged to apply for transfer. That the Carrier did not consider the transfer as effective until the expiration date of the bulletin is evidenced by two factors—(1) A notice was posted indicating those awarded the privilege of temporary transfer after the expiration date of the bulletin; (2) Carrier concedes that Claimant was not in temporary transfer status during the period May 24 through May 31 because senior conductors desired to transfer. It is evident, therefore, that Claimant's status as a temporary transferee in no event could be considered as effective until after the expiration date of the bulletin of June 1, 1948, or June 11, 1948.

The Employees contend that Claimant did not express a desire to transfer to St. Paul pursuant to the June 1, 1948, bulletin and was therefore on a "borrowed" status until he was returned to his home district on July 1, 1948. We cannot agree with this contention. The Claimant had indicated a desire for temporary transfer on May 24, 1948, and he had not revoked that expressed intention. After the notice was posted indicating that he had been awarded the temporary transfer, he continued to work in St. Paul showing his status on his time records as a temporary transferee. Under such circumstances he cannot now be heard to say that he did not desire to exercise the privilege of transferring. It follows that the claim for compensation under 9(b) will be sustained for the period from May 24 to June 11; the remainder of the claim is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 sustained to extent indicated in Opinion.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 5591

Docket No. PC-5670

NAME OF ORGANIZATION: Order of Railway Conductors, Pullman System.

NAME OF CARRIER: The Pullman Company.

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The sole question involved in this request for interpretation is what period of time should be considered in computing the compensation due Claimant under the above Award.

At 2:30 P. M. on June 11, 1948, when notice was posted that the temporary transfer was awarded to Claimant his status as a "borrowed" conductor ceased. Accordingly, he is entitled to pay under Rule 9 (b) until that time on June 11, 1948.

Referee Francis J. Robertson, who sat with the Division as a member when Award No. 5591 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of July, 1952.