

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, 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 D. Hooton, Fort Worth District, that The Pullman Company violated Rule 38, when

1. Under date of January 15, 1951, Conductor R. B. Regan of the Boston District was assigned by the Fort Worth District to Santa Fe Train No. 6, Fort Worth to Chicago, and

2. We now ask that Conductor Hooton be compensated for the trip on Santa Fe Train No. 6, Fort Worth to Chicago.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in the service of The Pullman Company, dated January 1, 1951. This Rules Agreement will be considered a part of this Statement of Facts.

Various rules thereof may be referred to herein from time to time without quoting in full.

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.

The essential facts necessary to a determination of this dispute are as follows:

On January 15, 1951, Conductor R. B. Regan, who holds seniority in the Boston District, was in the Fort Worth District, and was given an extra service assignment on Santa Fe Train No. 6, Fort Worth to Chicago.

Rule 25, "Basic Seniority Date" reads, in part, as follows:

"The seniority of a conductor, which is understood in this Agreement to mean his years of continuous service from the date last employed, shall be confined to the district where his name appears on the seniority roster."

Rule 38, "Operation of Extra Conductors," reads, in part, as follows:

"Paragraph (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 paragraphs (d) and (e)."

to his home district over a direct rail route, or a route on which through Pullman service operates, is, of course, to insure that the conductor is returned promptly to his home station. Also, the foreign district conductor should not be given work which, but for the operation of Rule 38 (e), would be assigned to a local district conductor, unless that service will enable Management to return the foreign district conductor to his home station expeditiously.

In determining whether a service assignment is over a direct route from the foreign terminal to the home district of a foreign district conductor, Management initially assumes that there is at least one direct route to the conductor's home station. A direct route is determined as direct on the basis of geographical direction, mileage, hours for the trip, and by whether the route is a recognized ticketing route from the foreign terminal to the conductor's home city. If a route over which Management contemplates operating a foreign conductor is found to be circuitous by comparison with other routes to the conductor's home district, the route is considered indirect, and the foreign district conductor is not used in service over it unless no local extra conductor is available for the assignment. However, if the differences between the route and other routes to the conductor's home district are not significant in proportion to the length of the trip, the assignment is considered to be on a direct route to the conductor's home district and is given to him.

CONCLUSION

In this submission The Pullman Company has shown that the assignment given to Conductor Regan 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 which is on a direct route toward the conductor's home station. No provision of Rule 38, which the Organization alleges has been violated in this dispute, prohibited Management from assigning Boston District Conductor Regan to return to his home district in service over the Santa Fe Lines from Fort Worth to Chicago and deadhead from Chicago to Boston on the New York Central Railroad. Therefore, the claim should be denied.

The Company affirms that all data submitted herewith in support of its position have heretofore been presented in substance to the employe or his representative and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is here made in behalf of Conductor D. Hooton for compensation of trip on Santa Fe No. 6, Fort Worth to Chicago, account of Carrier permitting Conductor R. B. Regan to fill said assignment, in alleged violation of Rule 38 (a) and (e) and the Memorandum of Understanding concerning compensation for wage loss.

Conductor Hooton held seniority in the Fort Worth District, while Conductor Regan was from Boston, with seniority in that district.

Rules 38 (a) and (e) and the applicable portion of the said Memorandum 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 paragraphs (d) and (e).

"(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."

"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 January 1, 1951, and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month."

The Organization asserts that all extra runs originating in the Fort Worth District accrued to holders of seniority in such district, save and except that "foreign" conductors might be moved out of the district to their home station where through Pullman service was maintained, or where service is performed "in the direct route to his (foreign conductor) home station."

It is contended that in moving Regan from Fort Worth to Chicago, thence to Boston, that the Company failed to recognize its contractual obligation to return Regan by a direct route; in this instance, Fort Worth to St. Louis, thence to Boston, a shorter and more direct route by some one hundred and twenty miles.

In addition to the above rules a past settlement on the property and the recommendation of a 1945 Emergency Board are cited as justifying the claim here made.

The Respondent asserts that both the letter and intent of the rules were complied with in the present instance, in that the movement was "toward the home station" of Conductor Regan when the factors—(1)—geographical direction—(2)—hours required for the trip—(3)—whether it is a direct ticketing route, and—(4)—mileage were considered.

It is further contended that the recommendations of the Emergency Board did not contemplate that the route with the least mileage must be used when more than one was available that approximated a direct route. It is agreed that no through Pullman service between Fort Worth and Boston was available; thus the sole question to be resolved is whether or not in performing service Fort Worth to Chicago and deadheading to Boston, constituted a return "toward his home station" while "moving in a direct route," within the meaning of the cited rules.

The one settlement on the property cited by the Petitioner as controlling, was based primarily on "mileage"; however, it is likely that "hours required for the trip" was, to a much lesser degree, also considered. In that instance it was determined that percentage-wise the route taken was some thirty percent greater (129.4 miles in a trip of 543 miles); while here the percent is six percent (116 miles in a trip of 2,000 miles).

It is the opinion of the Board that the Organization's interpretation would require a return trip to be made by the "most direct" or "shortest" route. It is believed that the interpretation of what is, or is not a direct route, within the meaning of the rule, must in this instance have the effect of disposing of the claim at hand rather than the establishment of guide-posts for future determinations.

It is the opinion of the Board that the route taken by Conductor Regan was not circuitous to the extent that the same can be properly classified as "indirect" and prohibited by Rule 38 (e).

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 21st day of May, 1952.

DISSENT TO AWARD 5763

DOCKET PC 5760

This Award has the effect of nullifying or modifying Rule 38 (e) which is beyond the authority of the Board.

The conclusion reached and the Opinion in support thereof is based upon assumption and speculation, and entirely ignores or rejects the basic evidence introduced as to the purpose and intent of Rule 38 (e), as urged by the parties before the 1945 Presidential Emergency Board upon whose recommendation Rule 38 (e) was based.

The Opinion states:

"It is believed that the interpretation of what is, or is not a direct route, within the meaning of the rule, must in this instance have the effect of disposing of the claim at hand rather than the establishment of guide-posts for future determinations."

What the majority has done here is to adopt a "self-made" rule to dispose of the instant claim, which the Board has no authority to do, and without any attempt to interpret Rule 38 (e) which is the Board's proper function.

/s/ ROGER SARCHET