

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS OF AMERICA
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Order of Railway Conductors of America for and in behalf of Conductor S. M. Mundy that:

1. The Chicago, Milwaukee, St. Paul & Pacific Railroad violated Rule 34 of the Agreement with its sleeping and parlor car conductors when Conductor Mundy was not permitted to displace Conductor J. P. Hanrahan on the pooled operation on Trains Nos. 5, 6, 15 and 16, departing on Train No. 5 from Chicago, July 22, 1951.
2. The Chicago, Milwaukee, St. Paul & Pacific Railroad also violated Rule 41 of said Agreement when it denied the claim of Conductor Mundy without first granting a hearing as requested.
3. We now ask that Conductor Mundy be credited and paid for the round trip on Trains Nos. 5 and 6 between Chicago and Minneapolis, under applicable rules of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: 1. Sometime prior to July 20, 1951, Conductor S. M. Mundy had operated in regular assignment on CMSTP&P Trains 3 and 22, but had been displaced from this regular assignment due to discontinuance of these trains. Conductor Mundy reverted to an extra conductor and was entitled to available extra work in accordance with rules of the Agreement.

Conductor Mundy, under provisions of Rule 34, quoted below for ready reference, also had displacement rights which gave to him the opportunity to displace any junior conductor operating in any regular assignment. The displacement rights accruing to Conductor Mundy under Rule 34 terminated ten days after his specified layover, from his previous regular assignment, expired.

Rule 34 of the Agreement reads, in part:

"DISPLACEMENT RIGHTS OF CONDUCTORS.

- (a) A conductor displaced from his regular assignment may apply for and shall have the right, fitness and ability being sufficient, to occupy any assignment where his seniority is greater than that

for his contention that he had a right to displace Mr. Hanrahan on No. 5 July 22nd. The Carrier insists it had no advice, upon which it could act in accordance with the rules, from Conductor Mundy prior to 9:15 A. M. July 22nd that it was his intention to displace on No. 5 July 22nd, 1951. Conductor Mundy's note was a confirmation of nothing because that note was dated July 21st, 1951 and up to 9:15 A. M. July 22nd, 1951 Conductor Mundy had not signified his intention of making a displacement. The truth of the Carrier's contention in this regard is supported by a notarized statement of Signout Man Lee S. Trela which is attached as Carrier's Exhibit "E".

8. As will be noted from the provisions of Rule 34 (f) the responsibility of signifying his intention of making the displacement to the designated official at least 2 hours prior to the reporting time was that of Conductor Mundy. The signout man had no responsibility in connection therewith, nor did any other representative of the Carrier. The schedule rule provides that "a conductor shall signify his intention of making a displacement to the designated official at least 2 hours prior to the reporting time" which Conductor Mundy did not do.

It is the Carrier's position that the claim is barred because an appeal was not made in connection with the Superintendent's decision within the 30-day period provided by Rule 41.

It is also the Carrier's position that Conductor Mundy did not signify his intention of making the displacement to the designated official at least 2 hours prior to the reporting time and therefore, he has no rightful claim to payment for service trips on Trains 5 and 6 July 22nd and 23rd, 1951 which he did not perform.

The Carrier therefore respectfully requests that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On July 14, 1951, Sleeping and Parlor Car Conductor S. M. Mundy's regular assignment was discontinued. He reverted to the status of an extra conductor until and unless he exercised displacement rights under the provisions of Rule 34 titled "Displacement Rights of Conductors." This rule sets forth the manner and method by which such rights may be exercised. On July 20, 1951, Conductor S. M. Mundy was used as an extra conductor Chicago to St. Paul and deadhead return in service arriving at Chicago on return trip 11:45 hours late, or about 8:30 P. M., as stated by the Carrier, or 7:30 P. M., as stated by the Employees, July 21, 1951. Upon arrival from the trip he deposited in the Company mail bag a written statement to his immediate superior, his Superintendent, that it was his intention to displace a junior conductor who was operating in regular assignment and who was due to report in Chicago for C. M. St. P. & P. Train No. 5 at 9:45 A. M., July 22, 1951. This displacement request was denied on the ground of non-conformance to Rule 34.

Rule 41 was invoked by the Employees, entitled "Claims." We believe that an interpretation of Rule 41, as it applies to the facts in the instant case, determines this dispute. That part of Rule 41 necessary to be interpreted is as follows, and we divide the rule and apply the facts thereto as we conceive the applicability of one to the other.

"When a conductor considers that any rule of the Agreement has been violated, he or his duly authorized representative may present a claim of rule violation to his Superintendent. Such claim shall be made in writing by the conductor, or his representative, within 60 days from the date of the occurrence of the alleged violation. If not so presented, claim will be barred." The record shows that on July 23, 1951, Conductor Mundy wrote a letter to the

Superintendent, M. P. Ayars, filing a claim because he considered he was denied the right to displace a junior conductor. The alleged violation would be that the Carrier failed to properly conform to Rule 34 dealing with displacement. He also requested that he be granted a hearing on his claim in the event the Superintendent would not compensate him for the trip he lost. This request, made in writing in conformance with Rule 41, was made within 60 days from the date of the occurrence of the alleged violation, therefore it was timely filed.

Rule 41 further provides: "If a hearing is desired by the party alleging rule violation, it shall be arranged within 20 days from date of claim. A transcript of all hearings shall be made and two copies furnished the conductor or his representative." Conductor Mundy, in his letter of July 23, 1951, requested a hearing. There was no hearing arranged within 20 days, as contemplated by the rule. No hearing was granted.

Rule 41 further provides: "Decision of the Superintendent shall be made in writing within 30 days after hearing is completed, or within 30 days from date claim is filed, if hearing is not desired." The Superintendent, without granting a hearing, denied Conductor Mundy's claim 8 days after he received notice of the request for a hearing. The decision of the Superintendent dated July 31, 1951, was not a valid denial of the claim under the provisions of Rule 41, for the reason that hearing was requested to develop the facts and circumstances for which the claimed violation arose. The final denial which establishes the basis for time limit of appeal, must be given in writing within 30 days after the hearing. It is indicated clearly the procedure taken by the Superintendent was in violation of Rule 41.

Rule 41 further provides that when this final decision is made within 30 days after the hearing is completed and it is not satisfactory, the employe or his representative must file notice of appeal within 30 days from the date of the decision or the claim is barred.

The Carrier takes the position that in the instant case the decision was rendered 8 days after the claim was first submitted in writing; that under the rule Conductor Mundy was required to give notice of appeal to his Superintendent within 30 days, which was not done. However, on September 3, 1951, the Local Chairman directed a letter to the Superintendent in which letter there was nothing that could be considered as a notice of appeal. As a consequence, under Rule 41, the claim is barred.

There was no basis for appeal. There was no hearing as required by Rule 41, where the merits of the claim were discussed, nor had final decision been made after hearing in conference to Rule 41. We conclude that the Carrier's contention is without merit. Under the circumstances we have no other alternative than to conclude that the Carrier violated Rule 41 of the Agreement. This being true, the merits of the claim are not before us.

For the reasons given herein, the claim should be sustained.

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

That the parties to this dispute waived oral hearing thereon;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1953.