

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, 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 on behalf of the Pullman Conductors holding seniority rights in the Kansas City District that:

1. Rule 38(f) of the Agreement between the Company and the Conductors was violated by the Company subsequent to May 16, 17, 19, 20 and 21, 1951, when the Company failed to enter on the Kansas City District Daily Posted Record for each of these days an unfilled assignment to deadhead Kansas City to Newton, then to perform extra road service Newton to Oklahoma City on Santa Fe Train No. 5.

2. The Company be required to post each unfilled assignment in keeping with Rule 38 (f) of the Agreement.

EMPLOYES' STATEMENT OF FACTS:

I

On May 16, 17, 19, 20 and 21, 1951 cars of Lines 3014 and 14 were operated Newton to Oklahoma City without the services of a Pullman Conductor.

In a letter to C. R. Christy, Local Chairman, Division 701, Order of Railway Conductors, Pullman System, dated July 13, 1951, H. E. Worley, Kansas City Superintendent, The Pullman Company, acknowledged these unfilled assignments, agreed to pay the claims of the Conductors entitled to these assignments, but declined to record these unfilled assignments on the proper Daily Posted Records of the Kansas City District.

II

The Rule at issue in this dispute is Rule 38(f) of the Agreement. It is here quoted in full, the portion directly pertinent to this dispute being underscored;

"(f) A complete record shall be kept in each district or agency covering the credited and assessed hours of all extra conductors of that district or agency and all assignments (filled and unfilled) of extra conductors, both local and foreign (including

conductor requirements not known prior to their reporting times. It must be obvious to the Organization that if the Company does not know of such unfilled assignments, it cannot post them on the Daily Posted Record and could not, therefore, agree in conference that such unfilled assignments would be ultimately recorded on the Daily Posted Record.

In this case it is apparent that the Kansas City District was not aware of the movement of two cars on Santa Fe train No. 5, Newton-Oklahoma City, on May 16, 17, 19, 20 and 21 at any time prior to the actual movement of the cars. Since the conductor requirements in question were not known to exist prior to their reporting times, Rule 38(f) does not require that any information with respect to these conductor requirements be shown on the Kansas City District Daily Posted Record.

The Organization is going beyond the plain meaning and intent of the language of the Rule. In order to prevail in this dispute it will be necessary for the Organization to prove that the parties agreed in conference to supplement the Daily Posted Record with notations reflecting every conceivable conductor requirement arising within a district both before and after the reporting times of those assignments. This proof the Organization will be unable to furnish the Board since the Company could not agree to a rule that obviously could not be complied with.

CONCLUSION

The Company submits that the facts support Management's position that Rule 38 (f) does not and cannot require a district or agency to post unfilled assignments that are unknown to that district or agency prior to their reporting times. The Organization's request that the Company be required to post every unfilled assignment, if granted, would impose upon Management a requirement not contemplated by Rule 38 or by any other rule of the Agreement.

The Organization's claim is without merit and should be denied.

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

OPINION OF BOARD: The Rule fastens several obligations upon the Carrier, among which are: to keep a complete record of all assignments (filled and unfilled), to post this record not later than 6:00 P. M. daily for a period of 30 days and then to turn these records over to the Local Chairman.

It is admitted by all hands that two types of entry must be, and are in practice, recorded:

1. Assignments known to a District Office prior to or during the daily signout period; and
2. Assignments which become known to a District Office subsequent to the close of one daily signout period but which can be filled prior to the beginning of the next signout period.

The dispute is therefore confined to unfilled assignments which become known to a District Office after 6:00 P. M.

FIRST. The primary obligation under this Rule is to keep a "complete" record, which after 30 days is to become the property of the Local Chairman. Incidental to this primary obligation is the requirement of daily posting with a 6:00 P. M. deadline. These are separate obligations.

SECOND. The daily posting requirement fulfills a purpose as far as the filled assignments are concerned, but no particular purpose as far as the

unfilled assignments are concerned. Since daily averages of filled assignments are required to be kept on a day-to-day basis, it is necessary to close the books, so to speak, at 6:00 P. M. each day. But this does not involve the unfilled assignments, nor does it suspend or limit the primary obligation of the Carrier to furnish the Local Chairman with a complete record for the 30-day periods.

(Exhibits not reproduced. Page references relate to original documents.)

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 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 Rule 38 (f) of the Agreement was violated.

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 April, 1954.