

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 in behalf of Conductor E. Stump, Chicago North District, that:

1. Paragraphs (b) and (e) of Rule 38 of the Agreement between The Pullman Company and its Conductors were violated by the Company on July 8, 1950, when the Company improperly annulled Conductor Stump's assignment Chicago to Boston.

2. Conductor Stump be credited and paid for the portion of this assignment improperly annulled.

EMPLOYES' STATEMENT OF FACTS:

I

A proper assignment was given to extra Conductor Stump on July 8, 1950.

This assignment directed him to report at the C&NW Depot, Chicago, and then to proceed to the yards to deadhead on equipment to Great Lakes, Illinois and go into service from there to Boston via C&NW-NYC-B&A Railroads.

Conductor Stump reported for this assignment and proceeded to carry it out.

However at the New York Central Yards at Englewood, Chicago, he received a note from the Assistant District Superintendent of the Chicago Central District of The Pullman Company informing him that he would be relieved by Conductor J. H. Varin, Montreal District.

Conductor Stump was so relieved by Conductor Varin. Conductor Varin performed the balance of this assignment.

At the time of this incident, Conductor Varin's status was that of a "foreign district Conductor."

In denying the claim in Award 6009, the Board made reference to Award 5763, previously referred to in this ex parte submission, and stated as follows:

"We have taken cognizance of Award 5763, this Division, involving the same parties, cited by the Carrier, and also the case settled on the property, cited by the Employees, and the contentions of the parties in each case. It is apparent in both cases the mileage factor was taken into consideration in the application of Rule 38 (e). While some controversy exists between the parties with reference to the percentage of mileage, that is, whether it is so insignificant in fact that it would make no particular difference insofar as the direct route is concerned, as contended for by the Carrier, or as contended for by the Employees where there must be no leeway in percentage of mileage.

As stated previously in the opinion, Rule 38 (e) contains none of the factors contended for by either of the parties in this case. We believe that a reasonable interpretation of the rule requires us to hold that when Conductor R. C. Lansberry deadheaded from Denver to San Antonio by way of Dallas, Dallas was an intermediate point on a direct route. Rule 38 (e) does not specify the most direct route, or the shortest direct route. The hour of arrival in any event would be the same as shown by the record. We believe under the circumstances that Rule 38, paragraph (e), was substantially complied with by the Carrier."

CONCLUSION

In this submission the Company has shown that on July 8, 1950, Management properly annulled Conductor Stump's assignment, Chicago-Boston, under the provisions of paragraph (b) of Rule 38, and assigned Montreal District Conductor Varin out of a station in service moving in a direct route toward his home station as provided in paragraph (e) of that Rule. Further, Question and Answer 2 permits Management to use a foreign district conductor to or from an intermediate point on "a direct rail route toward his home station." Also, the Company has conceded that Management was in error in not relieving Varin at Utica and has put the Organization on notice that consideration would be given to a claim for that part of the trip between Utica and Boston if the Organization desired to progress a claim in behalf of an Albany District conductor, which district has jurisdiction over Utica. Finally, Awards 5763 and 6009 of the Third Division, National Railroad Adjustment Board, support the Company's position in this dispute.

The claim that Conductor Stump is entitled to be paid for the trip Chicago-Boston is without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This run-around claim presents the question whether the Carrier properly used a foreign district conductor over an extra conductor in compliance with the requirements of Rule 38 (e).

The foreign district conductor's home station was Montreal. Claimant was assigned to operate Chicago to Boston, but his assignment was annulled at Englewood where the foreign district conductor was assigned to operate and did operate in service to Boston.

Rule 38 (e) so far as pertinent reads:

"(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.

"Q-2. Shall it be permissible to use a foreign district conductor in service to or from an intermediate point which is on a direct rail route toward his home station?

"A-2. Yes.

"Example: . . . A San Francisco District Conductor available in Chicago may be used in a Chicago-Los Angeles movement and relieved at Salt Lake City, where either a Los Angeles or a Salt Lake City District Conductor would be assigned. Likewise, a Salt Lake City District Conductor available in Chicago may be assigned to such a movement as far as Salt Lake City."

The Organization takes a three-fold position: first, that a proper annulment is contingent upon a proper assignment of the foreign district conductor; second, that Boston was not in a direct route Chicago to Montreal; and third, that Utica was not in a direct route Chicago to Montreal.

The Carrier concedes that Boston was not in a direct route Chicago to Montreal but contends that use of the foreign district conductor was proper as far east as Utica, an intermediate point on the assignment. The argument is that Utica was in a direct route to Montreal and that, if the Carrier had used the foreign district conductor Chicago to Utica only, Albany District Conductors and not Claimant would have been entitled to operate Utica to Boston although they would not have been so entitled if Claimant's assignment had not been annulled.

First. By the terms of Rule 38 (b) the annulment of Claimant's assignment was conditioned upon the proper assignment and use of the foreign district conductor under Rule 38 (e).

We may assume, without deciding, that Utica was on a direct rail route toward Montreal. In these circumstances, according to Q and A-2 and Example under Rule 38 (e), the annulment would have been proper if the foreign district conductor had been assigned to the Chicago-Boston movement only as far as Utica and had been relieved there by the assignment of an Albany District conductor. But none of these contingencies occurred. The foreign district conductor was both assigned and used through to Boston and was not relieved by the assignment of an Albany District conductor at Utica.

Second. If the validity of the annulment depended, when made at Chicago, upon a valid assignment, there was no such valid assignment then and there, because the foreign service conductor was not properly assigned under Rule 38 (e) to Boston. Or if the validity of the annulment depended, not upon technicalities of assignment, but upon the actual use made of the foreign service conductor, the same conclusion follows because he was in fact used, not only to Utica, but through to Boston.

Based on what actually happened, therefore, this is a good claim. This being so, it should not be whittled or defeated by conjecture and supposition about what might have been the case had the Carrier complied with the Rule.

(Page references relate to original document.)

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 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

Rule 38 (b) 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 30th day of April, 1954.