

Award No. 6617
Docket No. PC-6467

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, 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. Thielman, Fort Worth District, that:

1. Rule 38(e) of the Agreement between The Pullman Company and its Conductors was violated by the Company on January 17, 1952, when the Company assigned Conductor H. Davis, Fort Worth District, from Barstow via Clovis to Chicago on Santa Fe Train No. 2/24.

2. Conductor E. Thielman, Fort Worth District, be credited and paid for a deadhead trip Fort Worth to Clovis and for a service trip Clovis to Chicago under the applicable rules of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: I. Conductor E. Davis, Fort Worth District, completed a service trip and was released at Los Angeles on the morning of February 17, 1952.

Conductor Davis was assigned by the Los Angeles District Office to deadhead on pass Los Angeles to Fort Worth, departing Los Angeles 1:40 P. M. February 17, 1952 on Santa Fe Train No. 24.

Train No. 24 was scheduled to arrive at Barstow at 6:00 P. M. same date.

Shortly after the arrival of Train No. 24 at Barstow, Conductor Davis was given an oral assignment by Service Inspector M. D. Hauser to handle Pullman cars on Santa Fe Train No. 2/24 Barstow to Chicago.

Conductor Davis performed this assignment.

II. Train No. 24 was scheduled to depart from Barstow at 6:05 P. M. February 17 and scheduled to arrive Clovis at 2:30 P. M. the following day. Train No. 2/24 was scheduled to follow shortly after Train No. 24.

Santa Fe Train No. 75-97 was scheduled to depart daily from Fort Worth at 9:20 P. M. and to arrive Clovis at 11:30 A. M. the following day.

III. Rule 38(a) reads as follows:

"All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under

OPINION OF BOARD: It is contended Carrier violated the provisions of Rule 38 of the Agreement when on January 17, 1952, it failed to assign Fort Worth seniority district Conductor Thielman to a service trip, Clovis, N. M. to Chicago, Illinois, but instead assigned Fort Worth Conductor Davis, who was deadheading from Los Angeles to his home station, Fort Worth, and as a result thereof claimant be credited and paid for a deadhead trip, Fort Worth-Clovis, and for service trip, Clovis to Chicago.

The facts are not in dispute. Both claimant and Conductor Davis were employed on the Fort Worth seniority district as extra conductors. Conductor Davis was deadheading Santa Fe Train No. 24 from Los Angeles back to his home station, Fort Worth, and when Train 24 arrived at Barstow, it was split into two sections and two Pullman cars were attached to the second, or coach section of the train. It was necessary to have a conductor assigned thereto and no Los Angeles District conductor was available, Barstow being in that district Conductor Davis was given the verbal assignment to handle these cars, Barstow to Chicago.

Petitioner contends Rule 38(e) was violated when Carrier assigned Conductor Davis to operate in service beyond Clovis to Chicago. The question being: Could Carrier, under the provisions of Rule 38(e) properly assign Conductor Davis to service, a part of which operated in other than a direct route to his home station? That Rule 38(e), as interpreted by Q. and A. 2 and Example thereunder, ceased to be effective beyond Clovis, at which point he was diverted from the direct route and continued in service to Chicago, Clovis being in the Fort Worth Division.

Respondent Carrier states that an emergency existed at Barstow and that no Los Angeles extra conductor was available and therefore Rule 38(e) does not apply. That paragraph (e) of Rule 38 is a condition precedent to the application of paragraph (a) thereof, and that, it follows a foreign district conductor had priority rights over extra conductors; that neither Rule 38 nor any other rule restricts the use of a foreign district conductor to service in any direction if there are no extra conductors of the local district available, citing Awards 5588 and 6093. Therefore, it is alleged as there were no Los Angeles District extra conductors available in Barstow paragraph (a) does not apply and paragraph (e) exception thereto could not apply. Also citing Awards 3918, 3973 and 4441 in support of position taken.

Rule 38(a) provides:

"(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)."

Paragraph (e) provides:

"(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."

Example 2 thereunder provides:

"A Chicago District Conductor available in San Francisco may be used on any railroad having a direct rail route or through Pullman service between these points."

"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."

In applying the facts to the rule and Example 2 under paragraph (e) thereof we are of the opinion that the emergency situation existing when the original assignment of Conductor Davis was made at Barstow ceased to exist beyond Clovis and the assignment rightfully belonged to the Fort Worth District and claimant under this interpretation was entitled thereto. Under the provisions of Rule 38 where there is an assignment of a conductor in a foreign district it does not permit the routing of such conductor through his home terminal district under facts as here presented.

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 claim is sustained as per Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.

DISSENT TO AWARD 6617, DOCKET PC-6467

The Majority herein admit that Fort Worth District Conductor Davis was given the assignment Barstow, California, to Chicago, Illinois, because "no Los Angeles District conductor was available" at Barstow. Accordingly, the provisions of Rule 38 were not applicable including the prohibition against routing a foreign district conductor through his home district which prohibition was conjured up to support a sustaining award herein. No such restriction is contained in the rule.

In the case covered by denial Award 6093, involving the same parties as the instant case, both parties admitted the propriety of assigning a Philadelphia District conductor at Miami through his home district to New York. That Award denied the claim of a Washington District Conductor which was based on the fact that the Philadelphia District Conductor was assigned at Miami only to Washington at which latter point his destination was changed through to New York. The Majority in that Award disposed of the contention that the emergency situation existing when the original assignment of the Philadelphia District Conductor was made at Miami, comparable to Barstow in the instant case, ceased to exist beyond Washington, comparable to Clovis in the instant case, by holding that paragraph (e) of Rule 38 "does not restrict the use of foreign district conductors" to service moving in a direct route to their home station "if no extra conductors of the district are available" and in support of that view cited Question and Answer 7 under paragraph (e), supra.

Awards 5588, 3973 and 3918 also involved the same parties as the instant case.

Award 5588 held that "it is permissible to deadhead a foreign district conductor from a point to another point, not on a direct route home, and use him out of that second point when all extra conductors at the second point have been used."

Award 3973 recognized that the provisions of Rule 38 "are silent as to the length of the assignment of an extra man."

Award 3918 recognized that it would have been proper to have used a station agent, holding no rights under the Conductors' Agreement, on the assignment Barstow to Chicago in the event that neither Fort Worth District Conductor Davis nor local district extra conductors had been available therefor at Barstow.

The Award in the instant case writes a restriction into Rule 38(e) which is not shown to exist and which is in derogation of other Awards of this Division and beyond this Division's authority under the Railway Labor Act, Amended.

For the foregoing reasons, this Award is in error and we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ E. T. Horsley