

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, 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 W. R. Weigel, Jr., Jacksonville District, that:

1. Rule 37 (d) of the Agreement between the Company and its Conductors was violated by the Company on November 24, 1951, when the Company refused to permit Conductor Weigel to exercise his established right to displace a junior Pullman Conductor in Line 2030, Jacksonville-Fayetteville.

2. Conductor Weigel be credited and paid under applicable Rules of the Agreement for each trip lost in this assignment between November 24, 1951, and January 14, 1952.

EMPLOYEES' STATEMENT OF FACTS: I. On August 9, 1951, Conductor Weigel, Jacksonville District, reported at Orlando, Florida, for duty in regular assignment in Line 2052. Orlando is an outlying point in the Jacksonville District.

On October 4, 1951, an assignment in Line 2030 was posted for bid in the Jacksonville District Office.

On October 14, 1951, this assignment was awarded to Conductor W. E. Wall, Jacksonville District.

On November 11, 1951, Conductor Weigel notified the Jacksonville District Office by letter of his intention of exercising his seniority rights upon the completion of his tour of duty at Orlando on November 22, 1951.

In a letter dated November 14, 1951, District Superintendent Breaux, Jacksonville District, notified Conductor Weigel that he was interpreting Conductor Weigel's letter of November 11 as a letter of resignation from his assignment at Orlando.

On November 22, 1951, Conductor Weigel was relieved upon the completion of his tour of duty at Orlando.

On November 23, 1951, Conductor Weigel returned to Jacksonville.

On November 24, 1951, Conductor Weigel conferred with Superintendent Breaux, notifying him that his letter of November 11th could not be inter-

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: From August 9 to November 22, 1951, Claimant held an assignment as Station Duty Conductor on Line 2052 at Orlando, Florida, an outlying point in the Jacksonville District.

As of November 11, Claimant addressed the following letter to his Superintendent:

"I am planning to give up this assignment on Line 2052 when this tour of duty is completed on November 22nd and intend to exercise my seniority rights on my return to Jacksonville."

To this letter the Superintendent replied on the 14th that he was treating Claimant's letter of the 11th as a resignation and advised him that he had no displacement rights, but that it would be necessary for him to bid if he desired another position. On the 29th Claimant again wrote the Superintendent to the effect that the letter of the 11th was prompted by the fact that Claimant had, on that date, learned from a fellow Conductor that one Wall, a junior employe, was regularly operating on Line 2030; that Claimant had subsequently learned that the position on Line 2030 had been bulletined on October 4 and assigned to Wall on the 14th, and that if Claimant had been notified of that vacancy he would have bid it in. He asserted that under the circumstances he had been deprived of his seniority rights.

The record further discloses that the vacancy on Line 2030 was duly posted at Jacksonville, but not at outlying points; that Orlando is some 160 miles from Jacksonville, and that the only means of communication available to Claimant was by mail or travel on his own time.

We find no provision in the Agreement that required the Carrier to personally notify the Claimant of the vacancy on Line 2030, or to post notice thereof elsewhere than at Jacksonville, where it was posted.

The Carrier relies on Rule 32, which provides, among other things, that:

"A Conductor who resigns from his assignment shall not have displacement rights, but shall have the right to exercise his seniority to bid on bulletined runs or assignments."

The Claimant leans on Rule 37 (d), which says:

"A Conductor absent in service during the period of a run or an assignment in a run is bulletined and awarded to a Conductor junior to him shall have the privilege, fitness and ability being sufficient, of displacing any junior Conductor awarded such an assignment during his absence. * * *"

We are required to consider, therefore, whether Claimant resigned the position on Line 2052, and whether he was absent in service when the position on Line 2030 was bulletined and awarded to Wall.

The Claimant's letter to the Superintendent, under date of January 11, contains all the essential ingredients of an unqualified resignation. It expresses an unconditional intention to give up his position on Line 2052, and fixes the effective date. His expressed intention of returning to Jacksonville and exercising his seniority rights to another job does not qualify his resignation and may be regarded as surplusage, since no such declaration of intention was necessary to preserve Claimant's right to exercise his accumulated seniority. We think the Superintendent was justified, on receipt of this letter, in treating it as a resignation.

Nor do we believe that the Claimant was entitled to be regarded as absent in service while occupying the position on Line 2052 at Orlando. Without undertaking to enumerate all of the situations under which it might properly be said that an employe is absent in service, we feel safe in asserting that one occupying a regular, bid-in assignment in his own seniority district for a period of more than three months cannot be so regarded.

The Claimant has failed to make out a case.

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

That the parties waived oral hearing thereon;

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

That the Claimant has not established a violation of the Agreement.

AWARD

Claim denied.

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.