

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, 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 T. R. Ball, Asheville Agency, that:

1. Rule 38(c) of the Agreement between The Pullman Company and its Conductors was violated by the Company on April 20, 1952, when the Company failed to assign Conductor T. R. Ball to report at 11:15 A.M. for a deadhead trip on Southern Railway train 28-34 to Charlotte, N. C., and for a service trip on Southern Railway train 32, Charlotte to Washington, D. C.

2. Conductor T. R. Ball be credited and paid for a service trip Charlotte, N. C., to Washington, D. C.

EMPLOYES' STATEMENT OF FACTS: I. At Asheville on April 20, 1952, at the start of the signout period there were two known extra service assignments to be filled. These were listed by the Company as follows:

"Assignment No. 1:—

Report at Asheville, N. C. 11:15 A.M. for deadhead trip on Southern Railway train 28-34 to Charlotte, N. C. Release yourself on arrival at Charlotte. Report back at 7:20 P.M. to perform relief for six round trips, as per itinerary, in regular line 2681 operating between Charlotte and Columbia, S. C., on Southern train 23 and 24, then report to Agent Quinn at Charlotte for further instructions."

"Assignment No. 2:—

Report at Asheville, N. C. 11:15 A.M. for deadhead trip on Southern Railway train 28-34 to Charlotte, N. C. Release yourself on arrival. Report back at 7:00 P.M. for service as helper conductor on Southern Railway train 32, Charlotte, N. C., to Washington, D. C.

Both these assignments had the same reporting time.

The destination of the assignment listed by the Company as "No. 2" was farther from Asheville than the destination of the assignment listed by the Company as "No. 1."

Extra Conductor T. R. Ball, Asheville District, was the only Extra Conductor available for an assignment at Asheville during the signout period April 20, 1952.

In the instant case, both of the extra conductor assignments to be filled in Asheville on April 20, 1952, were requirements for extra conductors of the Asheville Agency to deadhead to an outlying point under the jurisdiction of the Asheville Agency for service from such outlying point. Therefore, the reporting times for the deadhead trips from Asheville to Charlotte, rather than the reporting times at Charlotte for the service trips, are the reporting times for the assignments for the purposes of the second and third paragraphs of Rule 38(c). Accordingly, the reporting time at Asheville for each of the assignments under discussion was the same; that is, 11:15 A. M., April 20, 1952. Therefore, since the Organization's assumption that one of the two extra conductor assignments had an earlier reporting time than the other extra conductor assignment is incorrect, its conclusion that Conductor Ball should have been given the assignment to report in Asheville for the deadhead trip to Charlotte for the service assignment on Southern Railway train 32 necessarily falls.

CONCLUSION

In this submission The Pullman Company has shown that none of the provisions of Rule 38 were violated in connection with the assignments given Conductors Ball and Dollar at Asheville on April 20, 1952. Therefore, the claim 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 the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: We think there is a variance here between the claim as presented, and at least as to the argument before us. It will be noted that the claim recites that Rule 38(c) was violated by the Company, whereas in the Organization's submission at the hearing the "dispute" is posed as follows: "Does the principle (destination of assignment) established by Rule 38(c) to govern the priority order of assignment having the same reporting time when two Extra Conductors are available for assignment apply equally when only one Extra Conductor is available?"

The Organization in commenting on this says "For the purpose of our discussion it must first be noted that the parties are in disagreement as to the issue involved in the instant case."

However, since the Carrier denies the claim as filed, and says it did not violate Rule 38(c) we may as well go ahead and decide the matter because the Carrier makes no point of the variance. The following facts are not in dispute: At the start of the established signout period at Asheville on April 20, 1952 (10 A. M.), the following two assignments were required to be filled:

"Assignment No. 1:

Report at Asheville, N. C. 11:15 A. M. for deadhead trip on Southern Railway train 28-34 to Charlotte, N. C. Release yourself on arrival at Charlotte. Report back at 7:20 P. M. to perform relief for six round trips, as per itinerary, in regular line 2681 operating between Charlotte and Columbia, S. C., on Southern train 23 and 24, then report to Agent Quinn at Charlotte for further instructions."

"Assignment No. 2:

Report at Asheville, N. C., 11:15 A. M. for deadhead trip on Southern Railway train 28-34 to Charlotte, N. C. Release yourself on arrival. Report back at 7:00 P. M. for service as helper conductor on Southern Railway train 32, Charlotte, N. C., to Washington, D. C."

It will be noted that both assignments had the same starting time at Asheville, the home terminal.

Claimant Ball was the only extra conductor available for assignment at Asheville during the signout period on April 20, and he was given Assignment No. 1.

The Organization says he should have been given Assignment No. 2 on the theory, as noted, that the principle (destination of assignment) is applicable even though there is only one extra conductor available, and in support of this theory argues that "one purpose of Rule 38(c) is to establish a standardized and equitable assignment procedure which shall operate automatically," and that the Carrier has no right to resort to optional listing as was done in this case.

It is at this point the Organization's claim fails. We have no right to change the word "two" in the rule to "one" and the word "are" to "is" and there can be no "senior of these extra conductors" if there be only one. It may well be that the principle is the same, but we are not to indulge in conjecture as to what the parties had in mind when the rule was written.

It is not disputed that giving assignment number one to the claimant resulted in a great number of service hours to him, although the local chairman says that what they are contending for would have resulted in a saving to the Carrier of 5 hours "or about \$8.30."

We think that these two items of alleged saving to the Carrier or a few more hours of service to claimant are immaterial. They do not tend to either prove or disprove the violation of the rule.

The burden was on the claimant to show that the rule was violated. That he has failed to do.

Our conclusion is that the claim will have to be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate 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 25th day of May, 1954.