

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, 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 J. M. Fiescher, Penn Terminal District, that:

1. Rule 38 of the Agreement between The Pullman Company and its Conductors was violated when on January 19, 1953, Conductor C. W. Kuenkler, Portland District on "emergency loan" to Seattle District, was assigned by the Penn Terminal District to PRR Train No. 153, New York to Washington.

Rule 42 is also involved.

2. Conductor Fiescher, who was entitled under Rule 38 to this assignment, be credited and paid for the assignment improperly given to Conductor Kuenkler.

EMPLOYES' STATEMENT OF FACTS:

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Prior to the start of the 1952-53 Winter Season the Company contemplated that additional Conductors would be needed in the Penn Terminal District. Portland District Conductors were canvassed and, under the procedure established by the Agreement, Conductor Kuenkler was selected for temporary transfer to Penn Terminal District. However, after Conductor Kuenkler was selected for temporary transfer he was not transferred, but instead was sent to the Seattle District on an "emergency loan."

Rule 42 of the Agreement, entitled "Temporary Transfers" provides that:

"Notice of the temporary transfer shall be shown on the assignment to duty slip, a duplicate copy of which is furnished the conductor.

"Conductors transferring under the provisions of this Rule shall be furnished railroad and Pullman transportation between the points involved." (Emphasis added.)

Conductor Kuenkler was never given an Assignment to Duty slip directing his temporary transfer from the Portland District to the Penn Terminal District.

the regular order of his assignment in a special movement requested by the President of the United States of America. Clearly, this part of Rule 38 is not pertinent to this dispute.

Paragraph (c) of Rule 38 states that 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. Thus, if Conductor Kuenkler had not been a Portland District conductor on temporary transfer in the Pennsylvania Terminal District and subject to assignment out of the Pennsylvania Terminal District in the same manner as other extra conductors of the Pennsylvania Terminal District, he could not have been assigned to service other than in service moving in a direct route toward his home station, or to a point within 50 miles of his home station unless no local district extra conductors were available. Since Conductor Kuenkler was not a foreign district conductor, but was, for assignment purposes, an extra conductor of the Pennsylvania District, he properly was assigned to extra Advance PRR train 153 on January 19, 1953, on the basis of his credited and assessed hours.

The remaining paragraphs of Rule 38 are not pertinent to this dispute in that they involve certain procedures not in dispute in this case.

Finally, in the hearing, Local Chairman Healy made reference to a claim which he alleged was recently made by the Organization in behalf of an extra conductor of the San Antonio District who was issued a temporary transfer from San Antonio to San Francisco. According to Mr. Healy, the San Antonio District improperly assigned this extra conductor to a service movement out of San Antonio, and the claim made in his behalf was paid (Exhibit A, p. 11). However, the Company has not been able to find a record of such case in Company files. The Company is, therefore, unable to comment on the case referred to. If, however, in its ex parte statement or other submissions to the Board, the Organization furnishes additional information, the Company will make a brief comment on the facts of the case.

CONCLUSION

In this ex parte submission, the Company has shown that Conductor Kuenkler was a Portland District conductor on temporary transfer in the Pennsylvania Terminal District, effective December 5, 1952. No rule of the Agreement, with especial reference to Rule 42, precludes the Company from using a conductor in service during the period he is being transferred from his home station to the point to which he is being transferred. Further, the Company has shown that Conductor Kuenkler as a conductor on temporary transfer to the Pennsylvania Terminal District was entitled, on the basis of his accredited and assessed hours, to be assigned out of the Pennsylvania Terminal District to extra Advance PRR train No. 153 on January 19, 1953. The claim of the Organization that extra Conductor Fiescher, Pennsylvania Terminal District, was entitled to the assignment and should be credited and paid for the trip performed by Conductor Kuenkler is without merit and should be denied.

All data submitted herewith and in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: During the 1952-1953 winter season Carrier decided it would need additional conductors to work out of the Pennsylvania Terminal District. To meet this situation conductors in the Portland District were canvassed and Conductor Kuenkler requested and was selected for temporary transfer to Pennsylvania Terminal.

On November 29, 1952, prior to consummation of Kuenkler's transfer to the Pennsylvania Terminal, the Portland office received a request from

the Seattle District office for the emergency loan of a conductor. Thereupon the Portland office assigned Kuenkler, who the parties concede was still a conductor of the Portland District and entitled to the Seattle assignment.

The exact date is not specified but the record makes it clear that on or perhaps a day or so after November 29th the Portland District advised the Seattle District that Kuenkler had requested temporary transfer to Pennsylvania Terminal and that such transfer had been arranged and approved.

November 30, 1952, the Carrier gave Kuenkler an emergency assignment, issuing an Assignment to Duty slip in connection therewith, directing him to perform emergency road service Seattle to Fort Knox, Kentucky, then to deadhead to Louisville, and then deadhead to New York City, where the Pennsylvania Terminal is located. On that same date the Seattle District wired the St. Paul District advising the latter district of Kuenkler's temporary transfer to Pennsylvania Terminal and requesting that it relay such information to other involved districts. No one contends that this was not done. In fact, upon arriving at New York, after carrying out his Seattle instructions, Kuenkler went to the Pennsylvania Terminal office and there, after making himself known to the proper authorities, was promptly taken up on the Carrier's extra list. Indeed at a hearing on the property the Organization's representative frankly conceded that not only the Management and everyone concerned, but Kuenkler himself, knew that he was being sent to the Pennsylvania Terminal on a temporary transfer.

January 19, 1953, the Pennsylvania Terminal District gave Kuenkler an assignment out of its district on PRR Train 153 from New York to Washington. This assignment gave rise to the instant claim by Conductor Flescher, who was available for service at the time and claims to have been entitled thereto under existing rules of the current Agreement.

Rule 42 of the Agreement deals with the temporary transfer of conductors to other districts to work on seasonal runs or other temporary assignments and is highly important. Portions thereof pertinent to the all decisive issue involved read:

"A conductor temporarily transferring to another district or returning to his home station following temporary transfer shall be considered a conductor of such district on the date of arrival. If he arrives in either district after the beginning of the signout period, he will not be considered for an assignment that signout day unless there are no extra conductors of the district available for assignment, including local conductors who may arrive in the district after the beginning of the signout period.

"Notice of the temporary transfer shall be shown on the assignment to duty slip, a duplicate copy of which is furnished the conductor."

Basically the Organization's position is that Carrier failed to properly transfer Kuenkler under Rule 42; that therefore when in the Pennsylvania Terminal District his status was that of a foreign district conductor, not a temporary transferee under such rule; and that hence his placement on and assignment from the Pennsylvania Terminal extra list for the involved trip (New York to Washington) when a Pennsylvania Terminal Conductor (Flescher) was available for service was in violation of Rule 38 of the Agreement and entitles such conductor to pay for the trip he allegedly lost on that day.

Boiled down, the gist of all arguments advanced by Claimant is that failure to give Kuenkler a copy of an Assignment to Duty slip on which notice of his transfer was endorsed in strict conformity with the requirements of Rule 42 completely nullified his transfer to Pennsylvania Terminal with the result his use out of that district against available Pennsylvania Terminal conductors was in violation of Rule 38.

The issue thus raised seems to be one of first impression on this Board. At least the parties present no Awards dealing with similar claims or situations. Turning directly to its consideration we note and find the record definitely establishes that, even though there was no physical delivery of an Assignment to Duty slip with proper endorsements, Kuenkler and everyone else concerned knew of his transfer to Pennsylvania Terminal; that he arrived at such Terminal, and was taken up on the extra list at that point on the very date of his arrival; that from that date on he was accorded all the rights and privileges of an employe transferred under Rule 42 and was so regarded by both Carrier and Employes; that even though there was a technical defect in the procedural details incident to his transfer, he was actually a defacto transferee under such rule; and, last but not least, that the first portion of the very rule on which Claimant relies to sustain his position expressly provides that a conductor temporarily transferring to another district shall be considered a conductor of such district on the date of his arrival.

In the face of conditions and circumstances such as have just been related we are unwilling to say Rule 42 can be construed as contemplating that failure to issue an Assignment to Duty slip results either in failure to transfer the involved conductor (Kuenkler) or in the nullification of the bona fide transfer as made. Indeed to hold otherwise would result in our giving force and effect to one portion of the rule and ignoring another. This conclusion, since the claim is based on Rule 38 of the Agreement which would become applicable only if Claimant's position with respect to Rule 42 were to be sustained, compels a denial Award.

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 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 under the confronting facts and circumstances the record discloses no violation of Rule 38 of the Agreement.

AWARD

Claims 1 and 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1954.