

Award No. 7715

Docket No. PC-8277

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,
PULLMAN SYSTEM**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of certain Atlanta District Conductors that:

1. Rules 25, 38(a) and 66 of the Agreement between The Pullman Company and its Conductors were violated by the Company on April 25, April 27, and April 29-May 3 inclusive, 1955, when the Company failed to assign extra Conductors, Atlanta District, to service on C. of Ga. Train No. 10, Albany, Ga., to Birmingham, Ala.

2. The following Atlanta District extra Conductors each be credited and paid for one round trip between Atlanta and Birmingham (deadhead Atlanta to Albany, road service Albany to Birmingham, and deadhead Birmingham to Atlanta) in compensation for the assignment improperly withheld from the Conductor on the date indicated:

April 25—J. C. Byers
April 27—F. F. Scarborough
April 29—C. Duncan
April 30—J. E. Miller
May 1—J. K. Durst
May 2—A. T. Ragan
May 3—G. A. Murray

EMPLOYES' STATEMENT OF FACTS:

I.

On April 25, April 27, and April 29-May 3 inclusive, 1955, an extra Pullman car was placed in service St. Petersburg, Florida, to Chicago, Illinois. The movement of this car between Albany, Georgia, and Birmingham, Alabama, is directly involved in this dispute and its movement between St. Petersburg and Albany is indirectly involved.

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

(Exhibits not reproduced.)

OPINION OF BOARD: At issue here is the proper application and interpretation of Rules 25, 38(a) (b) and 66 of the effective Agreement which reads as follows:

"RULE 25. Basic Seniority Date. The seniority of a conductor, which is understood in this agreement to mean his years of continuous service from the date last employed, shall be confined to the district where his name appears on the seniority roster.

"No deductions shall be made from the seniority of conductors for time spent on authorized leaves of absence, furloughs or sickness."

"RULE 38. Operation of Extra Conductors.

(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 paragraph (d) and (e).

"(b) Extra conductors shall be furnished an assignment slip showing time and place required to report for duty, also destination.

It is understood that Management has the right to annul an extra conductor's assignment under the following conditions:

"(1) When assigned in lieu of a regularly-assigned conductor who has been laying off and the regularly-assigned conductor reports for his assignment before scheduled reporting time.

"(2) When the cars in his charge are consolidated with cars of another train, or trains, that are in charge of a Pullman conductor, or Pullman conductors, except an extra conductor's assignment shall not be annulled when the cars in his charge are consolidated with the cars of another train that are in charge of a Pullman conductor and, by such consolidation, the need for an additional conductor is created."

"RULE 66. The jurisdiction of Districts and Agencies. No revision of the Book of Maps of May 16, 1949, captioned THE JURISDICTION OF DISTRICTS AND AGENCIES Over Conductor Assignments at Outlying Points, affecting the seniority rights of conductors of a given district or agency to work arising at outlying points shall be made without conference and agreement between Management and the General Chairman of the Order of Railway Conductors, Pullman System."

Claim was originally made in behalf of named Claimants account of alleged violation of the above quoted rules for intermittent dates from April 24 through May 4 account of assignments given extra Conductors. However, due to settlements on the property the only movements that we are presently concerned with involve those on April 25, 27, 29, 30, and May 1, 2 and 3, 1955.

The territory involved known as the "Seminole Route" originated at St. Petersburg, Florida, to Trilby, Florida, thence to Jacksonville, Florida, Albany, Georgia, Birmingham, Alabama, and Chicago, Illinois. On the dates

in question, due to the need for extra cars, extra Conductors were assigned to handle cars from Jacksonville to Chicago via Albany, Georgia, or from Trilby, Florida, to Chicago, via Albany, Georgia. St. Petersburg and Trilby are in the same seniority district, however, all other points involved, that is, Jacksonville, Albany, Georgia, Birmingham, Alabama and Chicago, Illinois are in separate seniority districts. The prime points involved Trilby, Florida and Albany, Georgia, are in the Tampa and Atlanta seniority districts, respectively.

That portion of the movement Albany to Birmingham, or Birmingham to Chicago is not at issue, except to note that all assignments, destination Chicago, were canceled at Birmingham, such cancellation being permissible under the applicable rule, namely, 38(b) 2.

The Organization asserts that the Respondent in making assignments of the extra Conductors covering the territory from St. Petersburg or Trilby, Florida to Birmingham and Chicago via Jacksonville and Albany were violating Rule 38(a) by assigning an extra conductor to service to a point in another seniority district to perform extra service, the need for which (service) arose in a district in which he (extra conductor) had no seniority. It was pointed out that the need for the extra conductor clearly arose or became necessary at Albany, Atlanta district, and that since the parties are agreed that an extra conductor cannot be deadheaded from one district to another to perform service in such foreign district, the respondent, by resorting to an "assignment to service" is here attempting to accomplish indirectly that which they cannot accomplish directly.

The respondent takes the position that the need for the extra service in question arose either at Jacksonville or Trilby and was properly assignable to the extra conductors of those districts since no rule of the effective Agreement limits the distance that can be covered by an assignment of an extra conductor. It was further pointed out that the use of an extra conductor, working with and in addition to the regular conductor is not prohibited and can be so done if it (Carrier) deems it necessary to meet the needs of the service.

The record indicates that a factual difference exists on at least one of the claim dates here, namely, April 25. On that date an extra conductor, Tampa, district, handled extra car only to Jacksonville and not to Chicago (Birmingham) via Albany. This assignment was only for this portion of the entire run, a Jacksonville extra conductor handled the balance of the run under another assignment. At and between these points both the regular and extra conductor were in service. On the other dates in question the assignments called for service from Trilby, Tampa district to Chicago (Birmingham) via Jacksonville and Albany.

Thus it is apparent that both the Rules and the need of the Carrier required the use of an extra conductor out of Trilby. Since the need therefore arose in the Tampa District a Tampa District extra conductor was properly assigned.

Rule 38(a) states:

"all extra work of a district, * * * shall be assigned to the extra conductors of that district when available * * *"

and in so stating, clearly reserves any extra work arising in that district to the available extra conductors of that district. We cannot read into the Rule any restriction as to the number of extra conductors that may be assigned to meet the Carrier's need. Here on one date there was a regular and extra conductor assigned to one car between two points. Certainly a Carrier is not here limited to the use of a minimum number of conductors nor does Rule 38(a) limit the distance of an assignment given to an extra conductor who held seniority in the district in which the need for such service arose. There was only one service requirement that arose in the Tampa district.

It is well settled that the freedom of action of a Carrier is restricted **only** by statutory enactment or by the terms of an effective Agreement. The latter does not prohibit the acts which are the subject of these claims.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1957.