

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James P. Carey, Jr., 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 Conductor A. W. Hyatt, San Antonio District, that:

1. On June 4, on June 5, and on June 17, 1954, Conductor A. W. Hyatt, San Antonio District, reported to Supt. W. P. Mahaffey that he was being unjustly treated by Day Agent O. Smith and that he desired investigation of this complaint.

2. On June 14, 1954, Supt. Mahaffey informed Conductor Hyatt that his findings were as follows:

"I have gone into the matter quite thoroughly and I have been unable up to this time to find any evidence to indicate that these rumors have any basis of fact."

3. On July 30, 1954, Conductor Hyatt invoked the provisions of Rule 50 of the Agreement and requested a formal hearing on his charges of unjust treatment by Day Agent Smith.

4. On July 30, 1954, Conductor Hyatt also invoked the provisions of Rule 50 of the Agreement and requested a formal hearing on the charge that Supt. Mahaffey conducted an incomplete, confused and unsatisfactory investigation of his original complaint.

5. On August 18, 1954, formal hearings were held in the San Antonio District on the two charges formally filed by Conductor Hyatt on July 30.

6. On September 16, 1954, Supt. Mahaffey wrote to Conductor Hyatt informing him that his findings on the charge against Day Agent Smith were as follows:

"In view of the fact that I find some justification for your assertion that you were unjustly treated, I am sustaining the claim."

7. On this same date (Sept. 16, 1954) Asst. Supt. Keithly wrote to Conductor Hyatt informing him that his findings were as follows upon the charge that Supt. Mahaffey had conducted an incomplete, confused and unsatisfactory unvestigation prior to July 30 of Conductor Hyatt's complaint of unjust treatment by Day Agent Smith:

"On the basis of the facts, it is my decision that your claim of unjust treatment by Supt. Mahaffey is denied."

8. Asst. Supt. Keithly's findings of September 16 are unsatisfactory, being directly contradictory to the findings of Supt. Mahaffey dated September 16.

9. Appeal is hereby made from the findings of Asst. Supt. Keithly dated September 16 as provided under Rule 50 of the Agreement.

10. Conductor Hyatt is entitled to a reversal of the findings made by Asst. Supt. Keithly dated September 16, 1954, since the findings also made September 16, 1954, by Supt. Mahaffey that Conductor Hyatt **had indeed** been unjustly treated by Day Agent Smith directly demonstrate that Supt. Mahaffey's earlier investigation of this complaint (resulting in Supt. Mahaffey's findings that Conductor Hyatt **had not** been unjustly treated by Day Agent Smith) were incomplete, confused and unsatisfactory.

11. Rule 50 of the Agreement was violated by the Company on August 18, 1954, when R. A. Gardner, Asst. to Supervisor, Labor Relations, improperly usurped and exercised certain duties and responsibilities reserved under the Rule to the District Representative, namely, the rendering of decisions in connection with hearings accorded Conductors under Rule 50.

OPINION OF BOARD: Conductor Hyatt claims violation of Rule 50 of the applicable agreement in that the District Superintendent conducted an alleged incomplete, confused and unsatisfactory investigation of Hyatt's complaint that he had been unjustly treated by the Day Agent at San Antonio.

The relevant portion of Rule 50 is: "When a conductor considers he has been unjustly treated and desires a hearing he or his duly authorized representative shall make written request containing the specific charge to his district representative within sixty days from date of the alleged unjust treatment."

On June 4, 1954 Hyatt telephoned Superintendent Mahaffey about the conduct of Day Agent Smith which Hyatt felt infringed on his rights as an employe and as a representative of the Conductor's Organization. Hyatt asked Mahaffey to acknowledge the telephone call in writing but Mahaffey declined to do so. Mahaffey's suggestion that Hyatt meet with him and Smith to discuss the matter was not acceptable to Hyatt.

The next day Hyatt confirmed his telephone conversation in a letter to Mahaffey in which he wrote: "I related to you the remarks or rumors on behalf of Day Agent Smith that had come to my attention to the effect that he intends to get me one way or the other. This information in addition to the recent petty reports of Mr. Smith leaves me no alternative other than to conclude that he resents a union man."

On June 14 Mahaffey wrote Hyatt that "in my conversation with you and in your letter, your complaints seem to be based entirely on alleged remarks or rumors to the effect that Mr. Smith does not intend to treat you fairly while performing his duties as Day Agent. I have gone into the matter quite thoroughly and I have been unable up to this time to find any evidence to indicate that these rumors have any basis of fact." Mahaffey concluded

with the suggestion that if Hyatt still felt he had been unjustly treated in any way by Agent Smith he should file a formal complaint in accordance with the rules.

Formal requests for hearing on two charges were subsequently filed. The first charged that Agent Smith's conduct violated Rule 50, and the second that Superintendent Mahaffey violated the same Rule by refusing to make written acknowledgment of Hyatt's telephone complaint and by conducting an incomplete, confused and unsatisfactory investigation of Hyatt's telephone and letter complaint of June 4 and 5.

Following a hearing on the charges against Agent Smith, Superintendent Mahaffey notified Hyatt "that in view of the fact that I find some justification for your assertion that you were unjustly treated, I am sustaining the claim."

After a hearing on the charge against Mahaffey the Assistant Superintendent notified Hyatt that "the record shows no valid reason why Superintendent Mahaffey should have acknowledged in writing your telephone complaint against Day Agent O. Smith which complaint was based largely upon hearsay, rumor and assumption. The evidence you submitted in connection with your telephoned complaint shows nothing of substance upon which an investigation could have been conducted. Therefore, your charge that a fair, complete and impartial investigation was not conducted is without merit."

We are here concerned only with the charge that Mahaffey's handling of Hyatt's telephone and letter complaint of June 4 and 5 violated the Rule. From a painstaking study of an extensive record we are of the opinion that this claim is without merit. Mahaffey owed no duty to acknowledge Hyatt's telephone call in writing. Whether or not to do so might have been conducive to better relations is immaterial. The claim rests on Rule 50, which specifically sets forth the procedure to be followed by a conductor who considers he has been unjustly treated. There is no provision for an informal telephone complaint of remarks and rumors, nor did Hyatt's letter of confirmation satisfy Rule 50. A complaint will be entertained if a hearing is desired, and in such case the request shall be in writing and shall specify the charge. Hyatt's letter of June 5 sought no hearing but merely confirmed his telephone report of remarks or rumors. Hyatt conceded at the hearing that he gave Mahaffey no specific information on which he could have been reasonably expected to conduct an investigation. As he put it—"I allowed him to make his own investigation." Under the circumstances Mahaffey would have been justified in refusing to consider the remarks and rumors. Nevertheless he conducted the kind of an investigation he deemed appropriate and the scope of it was wholly within his discretion.

The fact that evidence at a subsequent hearing caused Mahaffey to reach a different conclusion is of no consequence so far as the issue presented in this docket is concerned. On the contrary it suggests a sense of fair play on the part of Mahaffey which should be commended. Other points raised by claimant are also without merit.

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

That the parties to this dispute waived oral hearing thereon;

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 2nd day of August, 1957.