

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 extra Conductor I. H. Collins, New York District, that:

1. Rule 38(c) of the Agreement between the Company and its Conductors was violated by the Company on April 5, 1955, when the Company failed to offer Conductor Collins, during the established signout period, an assignment on NYC Trains 35-44, New York to Massena and return.
2. Conductor Collins be credited and paid under applicable rules of the Agreement for this trip improperly withheld from him.

EMPLOYES' STATEMENT OF FACTS:

I.

The parties are agreed that on April 5, 1955, in the New York District there was a requirement for conductor service on NYC Trains 35-44, New York to Massena and return.

The parties are agreed that this assignment required the services of an extra Conductor.

The parties are agreed that Rule 38(c) of the Agreement required that this assignment be offered to the proper New York District extra Conductor during the established signout period. In view of the agreement between the parties on this point Rule 38 is not reproduced.

The parties are agreed that extra Conductor Collins was the extra Conductor entitled to be first offered this assignment during the established signout period.

The parties are agreed that Conductor Collins was not offered this assignment during the established signout period as required by Rule 38(c) of the Agreement.

The claim in behalf of Conductor Collins is without merit and should be denied.

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: The record shows Carrier admission that Claimant Conductor I. H. Collins "fell due the assignment to New York Central trains 35-44, a round trip to Massena, reporting at 9:45 P.M., April 5, 1955 * * *."

Carrier maintains, however, Claimant "refused that assignment," stating:

"At approximately 9:55 A.M., April 5, 1955, 5 minutes prior to the signout period (10 A.M.-12 Noon), the signout clerk on duty, M. J. Schettino, telephoned Conductor Collins, whose residence is in Nanticoke, Pennsylvania, in order to afford him an opportunity to make up his mind whether he wished to displace into a regular line under the provisions of Rule 37, or to operate from the extra board. When Collins questioned Schettino about the extra assignment "which was open" for him Schettino replied that Collins was entitled to the assignment on NYC trains 35-44, New York-Massena and return, reporting time 9:45 P.M., April 5. Also, when Collins questioned the signout clerk as to his position on the extra board Schettino informed him that on the basis of his credited and assessed hours (13:00 hours) he was second man on the extra board, but that he was not entitled to the second assignment, New York-Chicago, reporting time 5:30 P.M., April 5, since his layover did not expire until 9:45 P.M.

"Conductor Collins then asked the signout clerk what conductor in regular line service he could displace that evening. Clerk Schettino checked his records and informed Collins he could not displace anyone that evening. Collins thereupon told the signout clerk 'to forget about it' and stated that he would 'call Al,' an apparent reference to the signout clerk who would be on duty the following morning. Since Collins did not accept the assignment in extra service on NYC trains 35-44, New York-Massena, Schettino marked Collins 'not available' for the April 5, 1955 signout period."

A written statement from Mr. Schettino, submitted by Carrier at the investigation shows this:

"* * * Since Mr. Collins did not accept 35 & 44 which I told him was open for him this day I marked him not available. * * *

"After the conversation mentioned above with Mr. Collins ended, he left no doubt in my mind of his availability and thus I marked him not available * * *."

Claimant Collins asserts in this record:

"The facts in this case are that I was not offered assignment 35-44.

"Since I was not offered the assignment I could not and did not refuse the assignment or any other assignment that day."

Organization cites Carrier instructions contained in Bulletin No. N-52, dated December 22, 1952 reading, in part as follows:

"There has been some comment recently that extra conductors are failing to make themselves available during the signout period and, in some cases, are failing to notify the district office prior to the signout period as to where they can be contacted * * *.

"All extra conductors should understand they are expected to be available during the signout period unless permission is granted by the Company prior to the signout period to allow the conductor to be unavailable. It should be further understood that this permission is to be granted only for legitimate and sound reasons and is not to be extended to permit an extra conductor to avoid accepting a less desirable assignment for which he might properly be due if he were available during the signout period. It should also be understood that extra conductors are expected to accept any assignments that fall due them under the rules of the working Agreement."

Thus, argues the Union,

"But the Company's defense is also improper for the reason that the Company's own instructions disclose that **it is not within the power of a Conductor to determine whether he is or is not available.**"

There is also the argument by the Organization that

"The parties are agreed that this assignment was not offered to Conductor Collins during the established signout period, but that instead the Signout Clerk contacted Conductor Collins outside of the established signout period."

Respecting the question of availability, argument offered in Carrier's behalf notes, with respect to Carrier Bulletin No. N-52, that such was "Carrier's instructions, * * * (they are) established unilaterally by the Carrier (and) they may be changed unilaterally, and a departure from the practice prescribed in such rules is not comparable to a violation of Agreement Rules."

We agree with this premise, but must also observe there is no showing in this record of any change by Carrier in its "instructions" to its conductors that they

"* * * are expected to be available during the signout period unless permission is granted by the Company prior to the signout period * * *."

We will sustain this claim for 4 reasons:

1. Carrier agrees Claimant "fell due" the assignment in question.
2. Claimant was not called during the established signout period.
3. Under Carrier's operating instructions, Claimant could only be declared unavailable by Carrier's permission. Record does not show such was granted.

4. Signout Clerk Schettino's statement that since Claimant "did not accept * * * I marked him not available * * * he (Claimant) left no doubt in my mind of his availability * * *" is no proof that Claimant desired to be recorded as unavailable.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January, 1959.