

Award No. 8686
Docket No. PC-8590

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 Conductor T. L. Greene, New York Central District, that:

1. Rule 38 (f) of the Agreement between the Company and its Conductors was violated by the Company on July 7, 1955, when the Company failed to record all assignments of extra Conductors in the New York Central District.
2. Rule 38 (a) of the Agreement was violated on this same date when an unrecorded assignment for which Conductor Greene was available was instead given by the New York Central District to a Penn Terminal extra Conductor.
3. Conductor Greene be credited and paid an amount equal to the total number of hours credited and paid to the Penn Terminal extra Conductor as a result of the assignment improperly given to him.

EMPLOYEES' STATEMENT OF FACTS:

I.

The pertinent portion of Rule 38 (f) reads as follows:

"A complete record shall be kept in each district or agency covering the credited and assessed hours of all extra conductors of that district or agency and all assignments (filled and unfilled) of extra conductors, both local and foreign (including assignments made at points where no seniority roster is maintained but which are under the jurisdiction of the district or agency). This record shall be posted daily not later than 6 P.M. in a place accessible to all conductors affected and shall be kept for a period of 30 days, after which time these records shall become the property of the local chairman, The

OPINION OF BOARD: The incident over which this case arose occurred July 7, 1955.

Organization filed its original claim August 31, 1955.

Hearing on such claim was held October 5, 1955.

Company denied the claim October 21, 1955.

Organization, on October 28, 1955, advised Company's district representative its decision on such claim, dated October 21, 1955, "is considered unsatisfactory. Please accept this as notice that an appeal will be made."

Under date of January 5, 1956, Organization's General Chairman wrote Company's appeals officer stating, in part,—

"Hearing with you is respectfully asked in the claim of the Order of Railway Conductors and Brakemen, Pullman System, for and in behalf of Conductor T. L. Greene, New York Central District, in which we contend that:—

and thereafter Organization cited the claim exactly as it appears in this record.

It was not, however, the same claim as originally presented by the Organization to the Company on August 31, 1955, and denied by the Company October 21, 1955. It has been substantially expanded.

The General Chairman's letter did say that "Appeal is taken from the unsatisfactory decision of Superintendent C. O. Haskett dated October 21, 1955." The claim cited, however, was not the same.

Company, in acknowledging the General Chairman's letter on February 20, 1956, observed:

"It is noted that in the appeal you have enlarged upon the claim by alleging that in addition to Paragraph (a) of Rule 38 being violated, Paragraph (f) of that rule was also violated. * * *

In its original submission to this Division, the Company noted, with respect to the General Chairman's letter of January 5, 1956, that—

"* * * In his letter of appeal, General Chairman Wise revised the initial claim filed in behalf of Conductor Greene in that he alleged violation of Rule 38 (f) on July 7 when the Company failed to record all assignments of extra conductors in the New York District. He also alleged violation of Rule 38 (a) when an 'unrecorded assignment' for which Conductor Greene was available was given by the New York District to a Pennsylvania Terminal extra conductor. General Chairman Wise also increased compensation requested in that he asked Greene be credited and paid an amount equal to the total number of hours credited and paid to the Pennsylvania Terminal extra conductor as a result of the assignment improperly given to him. * * *

Argument presented in Company's behalf contends:

"The record shows that the claim before this Board was never presented to the district representative as specifically required by

Rule 51, and that it was presented for the first time on January 5, 1956, or approximately six months after 'the date of the occurrence of the alleged violation,' when it was presented to the Appeals Officer and not the district representative. * * *

"The claim as originally made, and as presented to the Claimant's district representative dated August 31, 1955, was never appealed, timely or otherwise.

"* * * This issue may be raised at any time (Awards 8383, 8389)."

The pertinent portion of argument in Company's behalf is cited as:

"Rule 51 of the agreement between the parties is specific in debarring claims not presented in writing to the district representative 'within 60 days from the date of the occurrence of the alleged violation.'

"The record shows that 'the date of the occurrence of the alleged violation' is the date for which the claim itself is made, viz., July 7, 1955.

"The record shows that the claim before this Board was never presented to the district representative as specifically required by Rule 51, and that it was presented for the first time on January 5, 1956, or approximately six months after 'the date of the occurrence of the alleged violation,' when it was presented to the Appeals Officer and not the district representative. * * *"

A careful reading of the record indicates the claim before us is procedurally deficient. It will be dismissed.

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 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 claim is barred.

AWARD

Claim dismissed in accordance with Opinion of the Board.

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.