

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 L. L. Borchert, Cleveland District, that:

1. Rule 38 (c) of the Agreement between the parties was violated by the Company on August 27, 1955, when an assignment (Cleveland to Cincinnati on B/4 Train No. 421 and return deadhead, reporting time Cleveland, 6:15 A.M., August 28th) was improperly withheld from Conductor Borchert.

2. Conductor Borchert be compensated under applicable rules of the Agreement for this assignment improperly withheld from him, namely, not less than 6:50 hours, a minimum day, for the outbound road service trip and not less than 6:50 hours, a minimum day, for the inbound deadhead trip.

EMPLOYES' STATEMENT OF FACTS:

I.

At approximately 8:00 P.M., August 27, 1955, an assignment to extra service arose in the Cleveland District. This was after the close of the signout period of August 27th.

This assignment had a reporting time of 6:15 A.M., August 28th. This was before the start of the signout period of August 28th.

Rule 38 (c), eighth paragraph, reads as follows:

"It is further understood an extra conductor who has been assigned to station duty and who has completed his tour of duty on the station duty assignment and still has the least number of accumulated hours in the current month, including the hours earned on the station duty assignment, shall be considered the next unassigned

A, p. 8). According to the Organization's representative, the station master could have been advised that Conductor Borcherts' tour of duty expired at 2:20 A.M. and that Borchert, who then had the least number of hours, was entitled to the assignment. In this connection, Management's representative made clear the fact that the station master is not an employe of The Pullman Company and cannot be compelled to do Pullman Company work. Moreover, it was pointed out to the Organization's representative that no rule of the Agreement imposes upon Management the unreasonable requirement that it have a representative on duty 24 hours a day to handle the assignment of conductors.

CONCLUSION

The Company has shown in this ex parte submission that a requirement for an extra conductor to operate Cleveland-Cincinnati, reporting time 6:15 A.M., August 28, 1955, arose in Cleveland at approximately 8:00 P.M., August 27, 1955, several hours after the close of the daily signout period and four hours prior to the time The Pullman Company night agent went off duty. The Company has shown that in compliance with Rule 38, as interpreted in Third Division Award 6621, the assignment was held a reasonable time and filled at 11:55 P.M., August 27, five minutes prior to the time the night agent went off duty, by the only conductor then available, Conductor A. E. Henley. The Company has shown, further, that Rule 38, third paragraph, page 42 of the working Agreement, which provision is relied upon by the Organization, does not support the Organization's claim in behalf of Conductor Borchert. Finally, the Company has shown that the Organization's contention that the assignment should have been filled after Conductor Borchert completed his tour of station duty, at which time no Pullman representative was on duty, finds no support in the working Agreement as no rule of the Agreement requires the Company to maintain conductor supervisors on duty 24 hours a day, and the Company cannot expect railroad personnel to perform Company work.

The Organization's claim 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 critical part of Rule 38 (c) here involved is the eighth paragraph:

"It is further understood an extra conductor who has been assigned to station duty and who has completed his tour of duty on the station duty assignment and still has the least number of accumulated hours in the current month, including the hours earned on the station duty assignment, shall be considered the next unassigned conductor and shall be assigned to an assignment which occurs after the close of the signout period and which assignment has a reporting time between the time his station duty assignment was completed and the beginning of the next signout day."

This record is quite clear that (1) Claimant was an extra conductor assigned to station duty; (2) he still had the least number of accumulated hours in the current month at the end of such station duty; (3) he did complete his station duty tour at 2:20 A.M.—3 hours, 55 minutes before the scheduled reporting time of train in question; (4) the assignment for such train occurred

after the close of the signout period of August 27, 1955, and (5) such assignment had a reporting time (6:15 A.M.) between the time his station duty assignment was completed (2:20 A.M.) and the beginning of the next signout day (12:00 noon).

Thus, the Company had a contractual obligation to consider him "the next unassigned Conductor" and (he), the Rule directs,

"* * * shall be assigned to an assignment which occurs after the close of the signout period and which * * * has a reporting time between the time his station duty assignment was completed and the beginning of the next signout day."

Most certainly Claimant was available, within the language of Q&A 9, which "means that the conductor entitled to an assignment can be contacted and assigned and can reach the point where he is required to report by scheduled reporting time," Claimant here was at this "point" and immediately "available" from 8:00 P.M., to 2:20 A.M. The assignment occurred at 8:00 P.M.

Organization here relies heavily on Award 6621 (Rader), a sustaining Award it believes fully supports its position in the instant case.

In that Award we said:

"* * * Undoubtedly, emergency situations could arise in which there would not be sufficient time to advise the Conductor entitled to such appointment and, therefore, the rule must be interpreted on the particular facts in each situation on the basis of what is a reasonable time in any given situation. * * *"

The parties here are agreed

(a) that if Company was required by Rule 38 (c) to make the assignment at 2:20 A.M., or thereafter, August 28th, this assignment would have been given to Claimant; and

(b) that if it was proper under Rule 38 (c) to make this assignment at the time it was made, Conductor Healy was properly assigned.

Thus we are confronted by what is a "reasonable time" in the light of these facts. We think that "reasonable time" here would be to determine if there was sufficient time, between Claimant's release from the station duty assignment at 2:20 A.M., and the 6:15 A.M., reporting time of the assignment, to which he was clearly entitled, for him to report for duty for the assignment. We think there was.

We do not think Company defense, that it

"* * * has no representative on duty after midnight and under all circumstances considered, holding the assignment until shortly before midnight can hardly be considered unreasonable, * * *"

is sufficient here in the light of Organization's showing, without denial, that

"It has been the consistent practice of the Company that, when its Cleveland Night Agent goes off duty at midnight, any action required on behalf of The Pullman Company is taken by the Cleveland Station Master.

"In order that this Station Master may be aware of actions required and in order that he may be fully informed and in position to act on any new matters arising, a written notice is prepared daily and

given to the Station Master at the time when the Night Agent goes off duty.

"Following is a copy of a typical notice of this type:

August 12, 1955

"Parlor Car Line-up

"Car Greenwich for 433 to Cinti in A.M.

"Conductor C. F. Ruth on Station Duty until 2:20 A.M., and due any assignment during his tour of duty.

"Conductor L. L. Borchert due any assignment after 2:20 A.M., he is staying at 1416 Superior Ave.—No Phone, and if any emergency arises, Cond. C. R. Ruth will be given assignment. Phone LA 1-3875. * * *"

"H. C. Duffey—1"

In so holding, we do not say Company was required here to continue its own Representative on duty after midnight, but we are interpreting the Rule on the particular facts of this situation as directed by Award 6621.

We do not agree that denial Award 6430 (McMahon) has application here. That Award held

"The record has too many conflicts and inconsistencies, as between the parties, for this Board to sustain the claim, and there being reasonable evidence to support the contention of the Company, the claim based on the record, does not merit a sustaining Award, and does not sustain the allegation that the Company violated the Agreement."

This record has no conflicts or inconsistencies. The facts are not disputed.

A sustaining Award will be made.

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.