

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, 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, Birmingham Division No. 710, claims for and in behalf of Extra Conductor W. G. Atkins, Birmingham District, that:

1. Rule 38, Paragraphs (b) and (c) of the Agreement between The Pullman Company and its Conductors was violated by the Company on July 5, 1955, when the Company issued an improper Assignment to Duty slip to Extra Conductor W. W. Long, Birmingham District, reading in part as follows:

"To perform the following service 5 consecutive trips to Panama City & return. Or until Relieved by the successful Bidder on this Line. Then return DH to Bham."

2. We now ask that Extra Conductor W. G. Atkins, Birmingham District, be credited and paid under applicable rules as follows: For a deadhead trip Birmingham to Dothan, round trip Dothan to Panama City and return for as many round trips as were performed by Extra Conductor Long in excess of five under the above Assignment, and for a trip Dothan to Birmingham.

3. The total amount of time requested under this claim is 10:15 hours for deadheading from Birmingham to Dothan (3 round trips from Dothan to Panama City and return to Dothan or a total of 3 trips @ 1½ days per trip or a total of 4½ days in regular service), then 10:15 hours for deadheading from Dothan to Birmingham, a total of 20:30 hours for deadheading and 4½ days regular service.

EMPLOYEES' STATEMENT OF FACTS:

I.

A Conductor holding the regular assignment in Line 2789 successfully bid upon another assignment and hence Line 2789 became vacant starting July 6, 1955. This necessitated bulletining Line 2789 in keeping with the requirements of Rule 31, and further necessitated filling this Line from the extra board during this bulletining period.

The claim in behalf of Conductor W. G. Atkins is without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: While the run between Dothan, Alabama, and Panama City, Florida, was vacant pending bulletining and assignment of a new incumbent, extra conductor W. W. Long of the Birmingham District was assigned to the run by an assignment to duty slip which read "To perform the following service 5 consecutive trips to Panama City and return, or until relieved by the successful bidder to this line, then return DH to Bham." While the successful bidder was assigned on July 10, 1955 (due to personal reasons) he did not report until July 14. At this time W. W. Long had made eight round trips pursuant to the assignment.

Claimant W. G. Atkins charges a violation of Rules 38 (b and c) seeking compensation for 3 round trips (that being the number of round trips made in excess of five as originally specified,) and (10:15) 2 hours of deadhead time Dothan to Birmingham and return. Specifically the Organization's argument is:

1. That assignment of an extra conductor to an indefinite assignment is contrary to Rule 38 et sequa.
2. That the assignment of W. W. Long to more than 5 trips was contrary to Rule 38.
3. That the assignment when made was only an assignment to perform service until the position was filled pursuant to the bulletin procedure, and that when the successful bidder delayed accepting the assignment for personal reason, a new assignment was created which was improperly given to W. W. Long as he was ineligible pursuant to Rule 38.

The facts do not sustain the Organization's position. The provisions of the contract are controlling. Rule 38 provides:

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

There is no requirement that the termination of the assignment be shown. The assignment can therefore be indefinite unless some other provision of the contract is violated. Here the assignment was in the alternative of five days or until relieved. The time of termination no longer rested with the Carrier, but with the successful bidder, be this more or less than five days. The words five days become merely descriptive, an expression of expectation on the part of the assignment writer. The Carrier's right to annul the assignment is also spelled out in Rule 38.

Point 3, (ibid) is interesting. Logical and theoretical stopping places are numerous. Here the assignment was for five days, or until relieved. Award 3973 would not hold this assignment invalid, and restrict it to a day to day assignment on a theory of intent. Award 6110, on still a different theory, would divide the trip at each end, making each leg a separate assignment. But the

Organization does not claim these minute divisions, as no claim is made in regard to the first five trips. It would be possible to make divisions on an hourly basis, a mileage basis, and I suppose, on a meal time basis. However, the business at hand is running railroads. The problem at hand is interpreting contracts. The Carrier's interest is to have the job performed by an extra until the regular can take over. Nothing in the contract requires a break to be made and a separate assignment after the position is filled by bulletin when the Carrier is notified of further delay by the successful bidder. The one temporary assignment is not turned into two by further delay any more than one marriage is turned into two because the couple went through two marriage ceremonies. The situation is similar to an employe on sick leave due to pneumonia, who breaks his leg in getting out of bed. The temporary vacancy still exists, and the cause for its existence is not important.

Rule 38(b) not having been violated, Rule 38(c) has no application.

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 employe 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 contract 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 4th day of March, 1959.