

Award No. 9110
Docket No. PC-9027

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, 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 Paul Seeds, Fort Worth District, that:

1. Rule 31 (a) of the Agreement between the Company and its Conductors was violated by the Company on December 30, 1955, when:

(a) Conductor Paul Seeds, holding a regular assignment in Line 4083, filed his written notice of resignation on December 20, 1955;

(b) The Company bulletined this assignment on this same date;

(c) The posting period expired December 30, 1955;

(d) Rule 31 (a) required that the award be made on January 4, 1956;

(e) Instead the Company made the award on December 30, 1955, thus violating Rule 31 (a).

2. Rule 32, third paragraph of the Agreement between the Company and its Conductors was violated by the Company on January 4, 1956, when:

(a) No bids were received during the bulletining period;

(b) Under these conditions Conductor Seeds' written notice of resignation became effective only if, on the proper

award date, there was a Conductor on the Fort Worth extra board who was junior to him;

(c) On January 4, 1956, the proper award date, Conductor Zachary was on the Fort Worth extra board and was junior to Conductor Seeds;

(d) Under these conditions Conductor Seeds' written notice of resignation became effective;

(e) Under these conditions Rule 32, third paragraph, required that Conductor Seeds be placed on the Fort Worth extra board at 8:35 A. M. on January 7, 1956;

(f) Conductor Seeds was not placed on the Fort Worth extra board as required by Rule 32, third paragraph.

3. Rule 39, third paragraph, of the Agreement between the Company and its Conductors was violated by the Company on January 7, 1956, when:

(a) Conductor Seeds, being entitled to be added to the extra board of the Fort Worth District before the start of the signout period, January 7th, was not placed on this extra board with assessed hours in the amount of 41:00 hours as required by Rule 39, third paragraph.

4. Rule 38 of the Agreement between the Company and its Conductors was violated by the Company on January 7, 1956, and subsequently when:

(a) Conductor Seeds, being entitled to a place on the Fort Worth extra board during the signout period of January 7th with total credited and assessed hours in the amount of 41:00 hours, was not given the assignment in Line 3265, MKT Trains 28-27, Fort Worth to Denison and return, to which he was entitled;

(b) Conductor Seeds was not given subsequent assignments to which he was entitled by virtue of his place on the Fort Worth extra board, which place was improperly withheld from him;

(c) Conductor Seeds be credited and paid in the amount he would have earned had he been given the assignment on January 7th to Line 3265 and each subsequent assignment improperly withheld from him prior to being placed on the Fort Worth extra board on January 20, 1956.

EMPLOYEES' STATEMENT OF FACTS:

I.

Immediately prior to December 20, 1955, Conductor Paul Seeds was a regularly assigned Conductor in Line 4083.

On December 20th at 8:05 A. M., Conductor Seeds submitted his written notice of resignation from Line 4083.

of an employee who is so assigned is that the name of the employee is to be immediately posted where the vacancy was bulletined. There is no evidence in the record of any special custom or practice either as to time of assignment or notification.

The facts show that it was Carrier's intention to make this assignment as of 8:00 A. M. on October 18, not by means of the telegram sent to Murphy on the seventeenth. This is borne out by the fact that the telegram required him to call the signout office immediately; and when he called he was told at once that the assignment was not effective until the eighteenth. It is further borne out by the fact that notice of the assignment was not posted until 11:00 A. M. on the eighteenth. In the absence of any limiting language in the rule, the intention of the Carrier must govern under these circumstances.

In view of these facts, we conclude that Murphy was assigned to Line 6851 on October 18, 1953 and that the Carrier was within the rule in making the assignment as of that date. Since the assignment was not made until the eighteenth, Murphy had no right under the agreement to go out on the new run on the seventeenth, and there was no rule violation by the Carrier in refusing to permit him to do so."

CONCLUSION

In this dispute the Company has shown that Management fully complied with the provisions of **RULE 31. Bulletining of Runs**, the controlling Rule in this dispute. Also, the Company has shown that the Rule does not, as contended by the Organization, limit the right of the Company to any specific date during the 5-day award period. Additionally, the Company has shown that unless the Organization can show violation of Rule 31, there has been no violation of any other rule of the Agreement. Finally, the Company has shown that Third Division Award 7141 supports the Company's position in this dispute.

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

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

(Exhibits not reproduced.)

OPINION OF BOARD: On and prior to December 20, 1955, Paul Seeds hereinafter referred to as Claimant, was a regularly-assigned Conductor in Line 4083 of the Company.

On December 20, 1955, Claimant gave written notice of his desire to resign his assignment.

In ten minutes after this notice was given it was bulletined.

December 30, 1955, at 8:15 A. M. the bulletin expired.

No bids were received for the assignment.

December 30, 1955, after the bulletin had expired, an award was made to Claimant by "reassignment because he was the junior conductor and no other bid was received."

Prior to December 29, 1955, Conductor Zachary was on the extra board junior to Claimant Conductor.

December 29, 1955, Conductor Zachary was furloughed.

December 31, 1955, he was recalled to service and was on the extra board, and eligible to an award of the assignment on January 4, 1956 only.

Conductor Seeds' resignation would have become effective, if accepted, on the 7th of January, 1956.

The foregoing dates are not in dispute.

Claimant claims that his appointment on the 30th of December and the failure to award Conductor Zachary the assignment, of which Claimant had tendered his resignation, on the 4th of January was in violation of Rules 31 and 32 of the controlling Agreement. That Claimant's resignation became effective and that he should have been placed on the extra board during the signout period of January 7th, and he should be assigned and credited, as stated in 4 (a) of the Claim.

The Company asserts that the assignment of Claimant on the 30th of December was properly made in manner and form and specially authorized by a Memorandum of Understanding between the parties, amending Rule 31, of date September 1, 1955. This memorandum was effective several months before the claim here accrued.

Rule 31 (a) and (d), Rule 32, paragraphs 1 and 3, and Rules 38 and 39, are invoked by the Claimant.

Rule 31 (a), insofar as is pertinent, provides:

"New runs and each assignment (side) in a run that has preferred assignments (sides) shall be promptly bulletined for a period of 10 days (240 hours) in the district where they occur. * * * Conductors desiring to bid for such runs or assignments shall file their applications with the designated official within the 10-day period they are posted, and awards shall be made within 5 days (120 hours) thereafter on the basis of seniority, fitness and ability. * * *" (Emphasis ours.)

That part of the rule emphasized is the principal subject of controversy between the parties.

Rule 31 (d) provides:

"When no bids are filed for bulletined runs or assignments, such runs or assignments shall be filled by assigning the junior conductors on the extra board, * * *"

Rule 32, 1st and 3rd paragraphs, provides:

"A regularly-assigned conductor may resign from his assignment by giving a 15-day written notice to his district representative, provided there is a conductor on the extra board in that district who is junior to him and who has served his probationary period, * * *"

"A conductor who resigns from an assignment shall be considered an extra conductor at the expiration of the specified layover accruing to the last trip he makes in his assignment from which he is resigning and provided the 15-day resignation period has expired."

Rules 38 and 39 are effective if it is found that the Claim is sustained as to the violation of Rules 31 and 32.

The Memorandum of Understanding upon which the Company relies in the assignment, as made, after naming the parties thereto and the rule affected, recites:

"Awards in connection with regular assignments bulletined in accordance with the provisions of Rule 31 shall be made prior to the start of the signout period on any day within the 5 days (120 hours) specified in Rule 31."

Claimant points out that on the 20th day of December, the date of the tendered resignation, there was a conductor on the extra board; that on the 29th of December, Conductor Zachary's name was on the extra board and it was there on the 31st of December but that he had been furloughed on the 30th. Thus, it appears that had not the name of Conductor Zachary been removed from the extra board on December 30th, the date of the assignment, he would have been eligible for the appointment upon the theory of the Carrier in this submission.

This unusual development is not explained or commented upon by the Company. Standing alone, it permits an implication of lack of good faith. But the Claimant made no effort to elicit or develop the facts concerning this furlough. Inasmuch as we do not consider this development vital to the solution of the issues we make no further comment concerning it.

We assume that the applicable Rules of the controlling Agreement were consummated to permit change of status of employes, if in accord with their desires, as long as such change does not affect or impair the efficiency of the service to be rendered to the patrons of the Company. So here, Conductor Seeds desiring to resign the run to which he was assigned, the rules should support that purpose, if they can be so reasonably construed.

If it be conceded, that an award of an assignment, as contemplated and designated by Rule 31 was made to Claimant on the 30th of December, the Memorandum of Understanding, heretofore quoted, would control the award here in favor of the Company.

Because of the factual developments, we do not believe that the Memorandum does, or was intended to apply in this submission. In so finding, we do not accept the contention of the Claimant that an award was required to be made on the 4th of January because it would have conformed

to prior practice of the Company to make awards at the time during the five-day period, set up in Rule 31 (a) which would result in a minimum loss of time to those affected. If the Rule by specific terms or intentment permitted the award here considered to be made on any day within the five day period succeeding the bulletining the Company would not be bound by some practice which it had indulged contrary thereto. We have examined Award 7141, this Division, relied on by the Company and sought to be distinguished by Claimant, and we do not find it applicable as a precedent in this case.

Rules 31 and 32 are in *pari materia* and must be considered together in certain aspects, as developed in this submission.

Claimant was not and could not be a conductor on the extra board on December 30th when the award was made because until January 7, 1956, he was the regularly-assigned conductor on the Line involved. As there was no conductor on the extra board on the 30th of December it was impossible to make an assignment on that date. Had there been such an extra conductor on the board then, clearly, Rule 31 and the Memorandum of Understanding would have applied.

If Conductor Seeds were retained in his assignment it must have been because there was no one to whom an award of the assignment could properly be made within the 5-day period. If retained, he was not assigned to the run. He held his former assignment because his resignation could not become effective. Until that was determined by waiting until the full time of five days had elapsed to determine if an eligible Conductor was on the extra board, no award, as contemplated by Rule 31, was or could have been made. This is true because Rule 31 must, in the situation here presented, be read in connection with Rule 32 and both given meaning.

It is, therefore, our opinion that the right of the Company to make an assignment under Rule 31 (a) on any day within the 5 days succeeding the bulletining of the assignment is predicated on the ability to then make an assignment. Until it is certain that there is no eligible conductor on the extra board for the full five day period, within which the assignment can be made, the Company may not elect to declare Claimant's resignation ineffective and hold that he will be retained in his appointment.

Rule 31 permits the Company, if it desires, to make an assignment where a resignation is tendered, as here, on any day within the 5 days prescribed in the rule, if on that day there is an available assignee.

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 award here attempted to be made to the Claimant was in violation of Rules 31 and 32 of the controlling Agreement.

AWARD

The Claim will be allowed as set up in paragraph 1 (d), paragraph 2 (b), (c), (d), (e) and (f), paragraph 3 (a), and paragraph 4 (a) and (c) of the Claim to the extent that Conductor Seeds be credited and paid in any amount he would have earned had he been given the assignment on January 7th, to Line 3265.

No further award is made as to assignments subsequent to January 7, 1956, because they are not identified with sufficient particularity to support a specific award.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1959.