

Award No. 9448

Docket No. PC-9188

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

**THE 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 R. H. Harbaugh, Cleveland District, that:

1. On January 8, 1956, regular Conductor Harbaugh was properly given an assignment to station duty with a reporting time of 11:30 P. M., January 8th.
2. On this same date, extra Conductor Cowley held an assignment which required that he be released at the Cleveland station at 12:05 A. M., January 9th.
3. Rule 38 (b) was violated by the Company on January 8th when the Company, some time prior to 11:30 P. M., improperly annulled Conductor Cowley's assignment (with a required release at 12:05 A. M., January 9th) and then assigned him to station duty reporting at 11:30 P. M., January 8th.
4. Conductor Harbaugh be credited and paid under Rule 10 (b) and other applicable rules of the Agreement when he was improperly deprived of the station duty assignment.

EMPLOYES' STATEMENT OF FACTS:

I.

During the signout period in the Cleveland District on January 8, 1956, there were two Conductor requirements to be filled and only one available extra Conductor. Consequently, at the end of the signout period there remained one unfilled assignment. This was an assignment to station duty with a reporting time of 11:30 P. M.

This assignment to station duty in keeping with the requirements of the Agreement, was subsequently given to Conductor Harbaugh, a regularly-assigned Conductor who was on his established layover.

P. M., January 8 (Exhibit E). Additionally, the Organization requested that Harbaugh be compensated as provided in Rule 10 (b) and certain other "applicable rules;" i.e., 6:50 hours. (The complete text of Rule 38 (b) is attached to this ex parte submission as Exhibit F.)

The first section of Rule 38 (b) provides that extra conductors shall be furnished an Assignment to Duty slip showing reporting time and place required to report for duty, also destination. Inasmuch as the Organization does not claim that Management failed to furnish such information, it is clear that this part of paragraph (b) does not apply to the facts of this case.

The next section of paragraph (b) sets forth the conditions under which Management has the right to annul an extra conductor's assignment, none of which conditions is pertinent to this dispute. In citing this part of Rule 38 as having been violated, the Organization is asserting in effect that when Conductor Cowley took it upon himself to return to Cleveland on NYC train 12 (arrival time 8:30 P. M.) instead of NYC train 24 (arrival time 11:44 P. M.), the Company "annulled" his assignment. As previously pointed out, the instant case does not involve the annulment of an extra conductor's assignment. The so-called annulment of Conductor Cowley's assignment was a failure on Conductor Cowley's part to perform as instructed, for which failure Conductor Cowley was properly disciplined. The Organization's claim that Conductor Harbaugh is entitled to be credited and paid as provided in paragraph (b) of Rule 10, etc. (6:50 hours) is without merit.

CONCLUSION

In this ex parte submission, the Company has shown that on January 8, 1956, Conductor Cowley was available for assignment to the station duty assignment, reporting time 11:30 P. M., and that he properly was permitted to displace regular Conductor Harbaugh as provided in Q. and A. 9 of Rule 38. Also, the Company has shown that paragraph (b) of Rule 38 is not applicable to the facts in this case.

The Organization's claim that Conductor Harbaugh is entitled to be credited and paid 6:50 hours in accordance with the provisions of paragraph (b) of Rule 10 is without merit and should be denied.

All data presented herein 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: Claimant, regular Conductor Harbaugh, was given an assignment to station duty for January 8, 1956, with reporting time of 11:30 P. M. Extra Conductor Cowley was then on deadhead assignment not due to expire until 12:05 A. M., thirty-five minutes later, but contrary to his orders returned on an earlier train. Claimant's station assignment was then annulled and Cowley was assigned to it, pursuant to (1) the provision of Rule 38 (a) requiring all extra work to be assigned to extra conductors when available, with certain exceptions not here applicable; and (2) Question and

Answer 9 under Rule 38, which defines as "available" a conductor entitled to an assignment who "can be contacted and assigned and can reach the point where he is required to report by scheduled reporting time", and which further provides:

"However, an extra conductor who reports at his home terminal after the assignments have been made for the signout day shall not be privileged to displace any of the local extra conductors already assigned, but may displace a regularly-assigned conductor or a foreign district conductor assigned to a movement not on a direct route towards his home station (regularly-assigned conductor to be displaced first)."

The Employees' Position apparently is that for Extra Conductor Cowley to have become entitled to displace Claimant the Carrier must have annulled his deadhead assignment, and that such annulment was improper because not within the provisions of Rule 38 (b) relating to annulments.

It is unnecessary to consider whether such annulment would have been improper under the rule cited, for the record clearly shows that there was no annulment. On the contrary the record shows that Cowley improperly altered his orders to indicate that he did not enter the new assignment until 12:05, upon the close of his deadhead assignment, and for that action and the violation of his deadhead assignment orders he was disciplined and suspended for five days without objection or appeal by the Organization.

The argument cannot be sustained that Cowley's deadhead assignment must have been annulled in order to make him eligible or privileged to displace Claimant, in spite of his availability as defined in Question and Answer 9. For no rule or controlling practice has been cited or found to that effect. The only provision we can find in the Rules effective January 1, 1951 relative to double assignments does not forbid the assignment in question. It is the following paragraph of Rule 38 (c) on page 42:

"An extra conductor assigned to station duty shall not be given another station duty, road service or deadhead assignment (i.e., a double assignment) during the signout period. An extra conductor assigned to station duty shall be given a road service or deadhead assignment which occurs and which has a reporting time within his tour of station duty."

No violation of the Agreement has been shown.

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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 25th day of May, 1960.