

Award No. 9688

Docket No. PC-9649

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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 E. D. Evans of the San Antonio District, that:

1. Rule 38 of the Agreement between the Company and its Conductors was violated by the Company when under date of August 28, 1956, Conductor R. M. Moore was assigned to Line 3641 for a total of 22 days.

2. We now ask that because of this violation Conductor Evans be credited and paid the same amount that was credited and paid Conductor R. M. Moore.

EMPLOYEES' STATEMENT OF FACTS:

I.

During the established signout period in San Antonio District on August 28, 1956, extra Conductor E. D. Evans' credited and assessed hours were 207:50. Extra Conductor R. M. Moore's correct credited and assessed hours were 209:55.

Rule 38 (c) reads in part as follows:

"A regular signout period shall be established in each district, at which time assignments shall be made for a succeeding 24-hour period. Such 24-hour period shall be designated as a signout day, and the specific signout period of the signout day shall be determined by local conditions. The signout period shall be not less than 30 minutes nor more than 3 hours in length. The local chairman shall be notified in writing by the district representative at least 5 days in advance of any change in the schedule of the signout period or the signout day and bulletin shall be posted for information of the conductors.

the hours he departs, arrives and devotes to rest. Further, the Company considers that when a conductor reports his hours, the Company is entitled to rely on such hours as being accurate. If a report is inaccurate and the Company in good faith makes an assignment in reliance thereon, it would be manifestly unjust to subject the Company to penalty inasmuch as the error is not of the Company's making. Although Conductor Moore in the case at hand reported his hours correctly to Cashier Elledge and Mr. Elledge had no reason to question the accuracy of the report, if the facts were otherwise and Moore made an inaccurate report resulting in misassignment of Conductor Evans no basis for a claim would exist.

In the hearing on the instant claim November 28, 1956, the Organization endeavored to prove that the Company has assumed the responsibility of insuring that the hours reported by conductors are correct by alleging that the Company has paid claims on this basis. In reply, the Company wishes to point out that in each case where a claim has been paid the facts were such as to alert the Company to the probability that the hours as reported were inaccurate and the error could have been caught by the Company, a condition not present in this case.

CONCLUSION

The Company has shown in this ex parte submission that the hours reported by Conductor Moore on August 27, 1956, were correct and were properly used for signout purposes on August 28, 1956, as a consequence of which no misassignment occurred. This position, the Company has shown, is supported by Third Division Award 6755. Further, the Company has shown that even if a misassignment occurred on August 28, which it did not, the Company should not be subject to penalty since the Company acted in good faith on the basis of hours as reported.

The Organization's claim 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: Rule 38 of the Parties' Agreement governs the manner in which assignments shall be distributed among extra conductors by providing that extra conductors shall fall due assignments on the basis of their credited and assessed hours, the conductor with the least number of such hours to receive the assignment with the earliest reporting time. In the present case the Organization contends that Rule 38 was not complied with on August 28, 1956, when the Company gave Conductor Moore an assignment prior to Conductor Evans, the Organization contending that Conductor Evans had fewer hours than Conductor Moore and should have received the earlier assignment. Whether or not Conductor Moore actually had more hours than Conductor Evans depends upon whether a 2:30 hour rest period taken by Conductor Moore between 3:30 A. M. and 6:00 A. M. on his trip of August 26, 1956, should have been included in his sign-out hours (the 2:30 hours were in fact deducted).

In regard to the second paragraph of the claim herein, the Organization points to the Parties' memorandum of understanding which provides that "if a Pullman conductor presents a claim that he was not given an assignment

to which he was entitled * * * and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month."

In a sense the present Record reflects a case within a case, the inner case not emerging until after the claim was brought to this Board. Throughout the handling of the claim on the property the Carrier's representative agreed that Conductor Moore "should not have deducted the 2:30 hours rest because as it developed, no rest deduction for the trip in question was permissible." Then when the claim reached this Board the Carrier contended that this action of its representative was in error by virtue of Awards 6755 and 6315, both involving these same Parties. However, it cannot be satisfactorily determined from the present Record to what extent, if any, those Awards are applicable; had they been considered in the handling of the claim on the property, the Record might well have revealed with reasonable assurance whether those Awards do in fact cover and resolve any issue that is identical to the one involved herein in regard to the propriety of deducting the 2:30 hours under the precise facts of the present case. [It may be noted that the Organization, too, now claims support from Award 6755.] If the Carrier had not agreed on the property that the 2:30 hours should not have been deducted, the question of whether they should or should not have been deducted, under the facts, would no doubt have been much more adequately treated by the Parties in their handling of the claim on the property. As it is, however, this question was not raised as an issue until the claim reached this Board, and its late emergence leaves the Board with an inadequate Record concerning the relevance of Awards 6755 and 6315. Any attempt to apply those Awards under the present Record would carry serious threat of error or unfairness to one party or the other. Accordingly, for the purpose of disposing of the present claim, but for that purpose alone, the action taken by the Carrier in handling the claim on the property will be controlling as to the propriety of the 2:30 hours deduction. [Were the Record adequate in spite of the Carrier's change of position, however, the Carrier would not necessarily be bound by its earlier action even for the purpose of disposing of the present claim.] Thus, the Board's decision in the present case shall have no precedent value whatsoever on the question of whether rest taken under facts identical to those in this case should or should not be deducted. The effect of Award 6755 and 6315 on the latter question must be left for possible future consideration.

Next we reach the question of whether Conductor Evans (who was in no manner at fault) should bear loss as a result of Conductor Moore's mistake. Without assuming to say where the loss should ultimately rest, it suffices to say that it should not rest on Conductor Evans' shoulders.

In view of all the above considerations, the claim should be sustained.

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 Claim should be disposed of in accordance with Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Shultz
Executive Secretary

Dated at Chicago, Illinois, this 7th day of December, 1960.