

Award No. 9791

Docket No. PC-9875

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, 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 W. E. Watson, Salt Lake City District, that:

1. The Pullman Company violated Rule 36, Question and Answer 2 of the Agreement between The Pullman Company and its Conductors when on July 6, 1955, the Los Angeles District Conductor assigned to trains 107 and 108 was permitted to depart from Ogden on train 107 before expiration of his uniform release time for his outbound trip.
2. Because of this violation, we now ask that Conductor Watson be credited and paid not less than a minimum day, 6:50 hours, for a deadhead trip, Salt Lake City to Ogden; for a service trip under the rules of the Agreement amounting to 2-1/12 days, Ogden to Los Angeles, and for a deadhead trip under the terms of Rule 7 from Los Angeles to Salt Lake City.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of January 1, 1951, and amendments thereto, on file with your Honorable Board and by this reference is made a part of this submission, the same as though fully set out herein.

For ready reference and convenience of the Board, the most pertinent parts of Rule 36, Continuation in Regular Assignment, which are directly applicable to the dispute, are quoted as follows:

"A conductor operating in regular assignment shall not be used in service outside his assignment except in emergency and as provided in paragraph (d) of Rule 38. (Paragraph (d) not pertinent to this dispute.)

* * *

Additionally, in asserting that extra Conductor Watson is entitled to be compensated for the trip performed by the regular conductor in Line 4346, the Organization apparently is confused and is attempting to give the impression that the Memorandum of Understanding Concerning the Manner in Which Conductors Shall Be Paid When 2 Or More Pullman Cars Operate in Service Without a Conductor, appearing on pages 82-86 of the Agreement, is applicable. However, this Memorandum, which contains the only provisions in the Agreement requiring the Company to compensate a claimant conductor in an emergency situation, is applicable when two or more Pullman cars are operated without a conductor, which condition is not present in this case. When, as in the instant case, a conductor protects the movement and is compensated therefor, the Memorandum has no application and no payment is due any other conductor.

CONCLUSION

In this ex parte submission the Company has shown that Rule 38 (a), Question and Answer 9, supports Management in this dispute. Also, the Company has shown that neither extra Conductor Watson nor any other extra Salt Lake conductor was available for the assignment in question. The claim that Watson should be paid 6:50 hours, a minimum day, for a deadhead trip Salt Lake City-Ogden, 2-1/2 days for a service trip Ogden-Los Angeles and for a deadhead trip Los Angeles-Salt Lake City (Rule 7) 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 employee or his representative and made a part of the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 6, 1955 U.P. train No. 108 arrived at Ogden at 8:11 A. M. (due at 6:30 A. M.) and U.P. train No. 107 departed at 8:10 A. M. Carrier held up train No. 107 in the yards to permit The Los Angeles Conductor to detrain from train No. 108 and board train No. 107. The Los Angeles Conductor spent a minute or so at Ogden. Thus he did not use up his uniform release time of fifteen minutes. Ogden is the away-from-home terminal of the Los Angeles Conductors run and is an outlying point under the jurisdiction of the Salt Lake City District.

The Organization says that Claimant should have been called under question and Answer 2 of Rule 36 and Carrier says it was an emergency under Rule 36.

The Rule is as follows:

"Rule 36. Continuance in Regular Assignment. A conductor shall not be used in service outside his assignment except in emergency . . ."

Q-2. Shall a conductor who is operating in regular assignment, who arrives at his opposite terminal after the scheduled reporting time for his return (inbound) trip, be permitted to return in his regular assignment?

A-2. Yes, provided the uniform release time for the outbound trip expires before departure of his train."

It is agreed between the parties that The Los Angeles District Conductor did not expend his release time of fifteen minutes before boarding train No. 107.

Train No. 108 was due to arrive at Ogden at 6:30 A. M. and arrived at Ogden at 8:11 A. M. It passed through Salt Lake at 7:20 A. M. on the way to Ogden.

Carrier says that the first information it had that train No. 108 was late was at 6:00 A. M. and that it was too late then to notify anyone at Salt Lake. The train goes through Salt Lake to get to Ogden, but Salt Lake, which is the District Headquarters has to get their information from Ogden. Carrier further says that 6:00 A. M. was the earliest possible time they could get information on whether or not train No. 108 was late. They admit that on the previous day they had such information at 5:00 A. M.

The only question involved in this matter is whether or not train No. 108 being late created an emergency. Under Rule 36 Q-2 and A-2 the burden is upon the Company to show that an emergency existed. This they have failed to do.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Company violated the Agreement.

AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1961.