

Award No. 10305
Docket No. PC-10803

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, 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 H. W. Surrency of the Savannah Agency, that:

1. Rules 38 and 39 of the Agreement between The Pullman Company and its Conductors were violated by the Company when on February 15, 1957 Conductor M. A. Drake was given an assignment to report at approximately 12:10 A. M. February 6th to deadhead from Savannah, Ga., to Columbia, S. C., for service movement Columbia to El Paso, Texas.

2. We now ask that Conductor H. W. Surrency be credited and paid in the same manner that Conductor Drake received for performing this service.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing 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.

On January 1, 1957 Savannah Agency carried four Conductors on the Seniority Roster. The two senior Conductors were operating in regular assignment in Line 2626 between Columbia and Greenville, S.C., thus leaving two Conductors on the extra board, namely, H. W. Surrency and M. A. Drake. H. W. Surrency was the senior extra Conductor.

II.

The Daily Posted Record of Extra Conductors (Form 93.252) for the months of January and February, 1957, is attached as Exhibit No. 1.

This Record shows that on January 1st there were no extra Conductors available, nor was there a requirement for one.

the Company did not violate Rule 39 as claimed, that the figures for March were known by the Company, and that it followed Rule 38 was not violated.

CONCLUSION

In this ex parte submission the Company has shown that Management complied with the provisions of Rule 39 when it did not reduce the extra board during February in that it is the intention of the rule to afford conductors on the extra board the opportunity to earn as nearly as possible minimum earnings of three-fourths of a basic month's pay. Also, the Company has shown that there has been no violation of Rule 38. Additionally, the Company has shown that awards of the Third Division, National Railroad Adjustment Board, support the Company in this dispute.

The claim that Conductor Surrency was entitled to the assignment given Conductor Drake on February 15, 1957, and should be paid "in the same manner that Conductor Drake received for performing this service" is without merit and should be denied.

All data submitted herewith 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: Briefly stated, this is a claim on behalf of Conductor Surrency, Savannah Agency, that he be paid for the assignment given Conductor Drake on February 15, 1957 in violation of Rules 38 and 39.

That at the time of the instant dispute, two Conductors were assigned to the Extra Board at the Savannah Agency (viz.) Surrency (Claimant) and Drake.

That on February 15, 1957, Extra Conductor Drake had the least credited and assessed hours, and he was given an assignment under Rule 38, with a reporting time of 12:25 A.M., February 16, to deadhead to Columbia for service out of that point to El Paso, Texas.

The petitioner contends that Rule 39 of the Agreement requires the Carrier to furlough a Conductor or Conductors on the 15th day of the month when the average earnings of the Extra Conductors for the previous month shows that they have not earned an average of three-fourths of a basic month's pay.

The Carrier contends that no rule of the Agreement, including Rule 39, requires the Company to reduce the Extra Board when business conditions indicate that the services of the Extra Conductors will be needed.

We set out the pertinent parts of Rule 39:

"The Extra Board of a district shall be maintained by using thereon the number of Conductors which shall afford as nearly as possible minimum earnings of three-fourths of a basic month's pay for each Conductor who does not lay off of his own accord. * * *"

"Conductors may be furloughed at any time a force reduction is necessary but they shall be furloughed on a seniority basis as provided in Rule 40."

"On the 15th day of each month the earnings (dollars and cents) of Conductors working on the Extra Board during the preceding calendar month shall be averaged. If the Conductors on the Extra Board have not averaged three-fourths of a basic month's pay for the preceding month, the number of Conductors on the Extra Board shall be reduced so that the remaining Conductors will average as nearly as possible minimum earnings of three-fourths of a basic month's pay." (Emphasis ours).

In Award 6633, this Division answered the question before us when it said, we quote:

"The quoted provision of Rule 39 imposes on the Carrier the obligation to exercise good faith not to unduly augment its extra board by recall from furlough or transfer, while those already on that board are not, on the average, enjoying full time employment. On the other hand, the Carrier is not required to anticipate its future needs exclusively on the basis of its immediate past experience, when it is evident from other factors that the requirements of the service cannot be met without a substantial increase of available personnel."

While in its submission the Petitioner alleges that Conductor Drake should have been furloughed prior to February 15, 1957 (in either November or December 1956 or January 1957), the record shows that the only claim initiated and handled on the property, was that the Carrier violated Rule 39, when it did not furlough Conductor Drake on February 15, 1957, and that it is now too late to raise the issue for the first time in the Petitioner's submission to this Board. See Award 6560 and 7851.

Did the Carrier act in good faith? The Carrier contends that on February 15, 1957, that it averaged the earnings of the Conductors on the Extra Board during the preceding calendar month, that it also made a survey of known service requirements, which might arise during the second half of February, and on the basis thereof concluded that it would not reduce the number of Conductors on the Extra Board.

That the Carrier was right is shown by the fact that during the month of February 1957, Conductor Surrency's, the Claimant's, earnings were \$437.70, which is in excess of his basic pay rate.

We conclude that the Carrier did not violate the Agreement and the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate 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 23rd day of January 1962.