

Award No. 10589
Docket No. PC-11934

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, 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 T. R. Ball, Asheville Agency, that:

1. Rule 38 of the Agreement was violated when on May 9, 1956, Conductor T. R. Ball was not given an assignment in Line 2226, and which assignment was given to Conductor J. E. Dollar.

2. Because of this violation we now ask that Conductor Ball be credited and paid 6¼ days which he would have earned had he been properly assigned in accordance with the Agreement.

3. Rule 9 (a), Question and Answer 2 to Rule 9 and the Memorandum of Understanding concerning Compensation for Wage Loss are also involved.

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 pertinent parts of Rule 9, 38 (c) and 11, and the Memorandum of Understanding Concerning Compensation for Wage Loss are quoted below:

RULE 9. Held for Service.

"(a) A regularly-assigned conductor held at home station by direction of Management beyond expiration of layover shall be allowed hourage credit and pay up to 7 hours for each succeeding

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: There is no controversy over the facts in this case. On May 9, 1956, the Complainant, extra Conductor T. R. Ball, was eligible for an assignment in Line 2226; on the morning of May 9th, Conductor Ball received a notice from the Carrier that he was required to appear as a witness in court proceedings. On the afternoon of that same day his witness duty assignment was cancelled; his assignment in Line 2226 had been given to another conductor.

The Petitioner maintains that since the Claimant was not called as a witness nor used in witness service that Rule 11 of the Agreement is inapplicable; that Claimant was thereby deprived of an assignment and that Rule 38 (c) should apply; that Carrier should pay him for his wage loss.

Conversely, it is the position of the Carrier that the Claimant was properly placed on and assigned to witness duty; that, therefore, under Rule 11 of the Agreement Conductor Ball was no longer eligible for the assignment made to Conductor Dollar in Line 2226.

On May 9, during the established signout period, Conductor Ball was issued the following assignment:

"Asheville, N. C.
May 9, 1956

"T. R. Ball

"Report at office 9:00 A. M. to perform the following service:
Witness duty per oral instructions to be given to you. On Time Sheet carry your time in accordance with Rule 11 of the current Conductors' Agreement until released."

This assignment was made in pursuance of Rule 11.

"RULE 11. Witness Duty. A conductor required to appear as witness in court proceedings by direction of Management shall receive credit of 7 hours for each 24-hour period and compensation at his regular rate of pay while in such service, and allowed actual, legitimate and reasonable expenses."

He was required by the Carrier to appear as a witness in Phoenix, Arizona, at 10:00 A. M., May 15th. A schedule was prepared which called for Conductor Ball's departure from Asheville by train not later than 11:20 A. M., May 12th. The assignment in Line 2226 did not terminate until 5:15 P. M. on May 12th.

By its very nature **Rule 11 is a special rule** which must take precedence over any general rule. At the time the assignment to witness duty was issued to the Claimant as this record discloses, there was a law suit pending in Phoenix, Arizona, between the Carrier and some other litigant.

Rule 11 makes it possible for the Carrier to prepare and hold itself in readiness for the trial of a law suit in which the Carrier is a participant.

Because of the knowledge of an employe of certain facts pertinent to the litigation it may become very essential to call such an employe as a witness. The Carrier by the very nature of things cannot have exclusive control over the conduct of a law suit, the adverse party and the Court must definitely be considered, as well. In the orderly process of events, a witness may have to be held in readiness to testify for several days before he is actually called to the stand, on the other hand a law suit may be settled immediately after it is reached for trial as occurred here; the litigant in a law suit must be prepared for any contingency.

Under the circumstances of this case Rule 38 (c) just cannot be applied. It is unfortunate that Conductor Ball lost his assignment in Line 2226 but as the Board has no equity powers there is nothing we can do about it. The Claimant has failed to prove there has been any violation of the Agreement.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1962.