

Award No. 10707

Docket No. PC-11408

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Wilson, 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 C. E. Stiffler, Washington District, that Rules 25 and 38 of the Agreement between The Pullman Company and its Conductors were violated on October 19, 1957, when:

1. The Company blanked the Indianapolis District Conductor's regular assignment on PRR train #59 between Washington, D. C., and Harrisburg, Pa.

2. Because of this violation, we now ask that Conductor Stiffler be credited and paid, under the terms of Rule 21, for a service trip Washington to Harrisburg, and for a deadhead trip, under applicable rules, Harrisburg back to Washington.

Rules 15, 21, 23, 31, 36, 61 and Question and Answer 4 to Rule 9 are also involved.

The Memorandum of Understanding Concerning Annulment of Runs is also involved.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of September 21, 1957, 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 Rules 9, 15, 21, 23, 25, 31, 38 and 61 which are applicable to this dispute are quoted as follows:

"RULE 15. Layovers in Regular Assignment.

date, and requests that Washington Conductor Stiffler be credited and paid for a service trip Washington-Harrisburg on Saturday, October 19, 1957, and a return deadhead trip Harrisburg-Washington. On the other hand, in the case filed in behalf of Washington Conductor Feehly, the Organization asserted that the regular conductor assigned to operate in Line 6584 on Sunday, September 1, 1957, was improperly used in service on that date and that a Washington District Conductor (Conductor Feehly) should have been assigned to operate Washington-Indianapolis instead of Washington-Harrisburg on Sunday, instead of Saturday, as in the instant case, and alleged Feehly should be credited and paid for a service trip Washington-Indianapolis instead of Washington-Harrisburg, as in the instant case, and a return deadhead trip Indianapolis-Washington instead of Harrisburg-Washington. In the case filed in behalf of Indianapolis Conductor Rood, who regularly operated in Line 6584, the Organization also presented a different theory in that it asserted that when Conductor Rood was returned to Indianapolis on Sunday October 20, 1957, instead of Saturday October 19, he was held in Washington beyond his scheduled layover and was returned to Washington "outside of his assignment," and that he was, therefore, entitled to held-for-service time in Washington and Indianapolis.

The Company submits that the Organization has not assumed its burden of establishing facts or advanced a theory sufficient to require or permit the allowance of the instant claim. Numerous Awards of the Third Division hold the burden of establishing a claim is upon the one who asserts it. See Third Division Awards 4011, 2577 and 5445.

CONCLUSION

In this ex parte submission the Company has shown that the Operation of Conductors Form for Line 6584, effective June 30, 1957, was established in accordance with the rules of the Agreement. Also the Company has shown that no Washington District conductor was entitled to operate on PRR train 59 on Saturday, October 19, 1957, and that no adjustment is due Conductor Stiffler or any other conductor. Finally, the Company has shown that Awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim is without merit and should be denied.

All data submitted herewith in support of the Company's position have been submitted to the claimant or his representatives and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made for and on behalf of Conductor C. E. Stiffler, Washington District that Rules 25 and 38 of the Agreement between The Pullman Company and its Conductors were violated on October 19, 1957.

Also that Rules 15, 21, 23, 31, 36, 61 and Question and Answer 4 to Rule 9 are involved.

The Rules or pertinent part thereof involved in this case read as follows:

"RULE 15. Layovers in Regular Assignment.

Specific layovers shall be prescribed in operating schedules for regular assignments."

"RULE 21. Regular Assignments — Part Time.

Conductors working part time on regular assignments shall be paid for a round trip the number of days there are conductors in the run as covered by bulletined schedule; less than a round trip shall be paid for proportionately."

"RULE 23. Minimum Day Credits and Payments.

(a) Conductors in extra road service or deadheading on passes or with equipment who perform a trip in any one of the foregoing classes of service of less than 6:50 hours from the established reporting time to the established release time shall be credited and paid not less than 6:50 hours, a minimum day, for each trip unless the payment of continuous time for the trip is permitted under paragraphs (b), (c), or (d) of this Rule."

"RULE 25. Basic Seniority Rights and Date.

(c) In any district, the right to perform all Pullman conductors' work arising therein, as established by past practice and custom, shall belong exclusively to the conductors having seniority otherwise contained."

"RULE 31. Bulletining of Runs.

(a) New runs and each assignment (side) in a run that has preferred assignments (sides) shall be promptly bulletined for a period of 10 days (240 hours) in the district where they occur. Any of the following runs known to be of more than 31 days' duration shall be promptly bulletined for a period of 10 days (240 hours) in the district where they occur:

1. Temporary runs.
2. Seasonal runs.
3. Vacancies. (sic)

Conductors desiring to bid for such runs or assignments shall file their applications with the designated official within the 10-day period they are posted, and awards shall be made prior to the start of the signout period on any day within 5 days (120 hours) thereafter on the basis of seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. Conductors bidding on more than one bulletined run or assignment shall specify in their applications their first choice, second choice, etc.

***Known details of regular assignments, such as service hours, length of layover periods at home station and away-from-home sta-

tion and train numbers, shall be shown in bulletins at the time runs are posted for bid."

"RULE 36. Continuance in Regular Assignment.

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.

"Q-1. May a conductor who is operating in regular assignment, who has missed his return trip at his opposite terminal, be used in service toward his home terminal as provided in Rule 38?

"A-1. Yes, provided the uniform release time has expired. However, he shall not be used in a regular assignment operated by the away-from-home district.

"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.

"Q-3. May a conductor who is operating in regular assignment be used out of his assignment at his opposite terminal on a train departing before his specified layover expires?

"A-3. No, except in an emergency."

"RULE 38. Operation of Extra Conductors.

(a) All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra conductors of that district when available, except as provided in paragraphs (d) and (e)."

"RULE 61.

Posting 'Operation of Conductors Form' (Form 93.126), shall be posted in places accessible to those affected and a copy of each such form shall be furnished to the General Chairman of the Organization at the time posted. A run covered by an 'Operation of Conductors Form' (form 93.126) shall remain in effect until canceled by bulletin."

"RULE 9. Held for Service.

* * *

"Q-4. Shall a regularly-assigned conductor who has been held at the away-from-home terminal of his assignment and who consequently does not return to his home station on his scheduled train be credited and paid held-for-service time, as provided in paragraph (a), starting immediately upon being released at his home terminal?

"A-4. Yes, provided the train on which he was scheduled to return carried Pullman equipment in service."

The Indianapolis operation designated as Line 6584 was operated between Indianapolis and Washington on PRR trains 20-40-574 outbound and 59-31-21 inbound. A Conductors Form dated June 30, 1957 was in effect on the date of this claim. The Conductors Form showed trains outbound 20-40-574 operating daily except Saturday and trains 59-31-21 inbound daily except Saturday.

In the Conductors Form under remarks it notes 24 hours layover each week due to non-operation on Saturday.

The Conductor who arrives on Saturday is required to remain in Washington for an additional 24 hours.

The Carrier takes the position that since Line 6584 did not operate on Saturday the regularly assigned Indianapolis Agency Conductor received a 24 hour layover in addition to the layover time away from home accruing to the trip.

Claim was filed alleging that the Contract was violated on October 19, 1957, account Indianapolis District Conductors' assignment on train 59 was not filled with a Washington District Conductor requesting that the Claimant be credited and paid for a service trip Washington to Harrisburg and for a dead head trip Harrisburg to Washington.

The record in our opinion reveals that train 59 carrying Line 6555 did in fact operate on Saturday notwithstanding that it was stated in the Conductors Form to be daily except Saturday operation.

Further it appears to us that train 59 had been bulletined to carry two Conductors, one conductor run being operated by Indianapolis Agency Conductors and the other was operated by Chicago West Conductors.

It also appears to us that Conductors are assigned to trains rather than lines alone.

We do not believe that the Carrier's remarks on the Conductors Form that the 24 hour layover was due to non-operation on Saturday would change the fact that train 59 did operate on Saturday. We believe the form was improper.

In view of the facts and circumstances of this case it is our conclusion that the Agreement was violated.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 26th day of July 1962.