

Award No. 10708

Docket No. PC-11409

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 J. A. Feehly, Washington District, that The Pullman Company violated Rules 15, 36, 38 and 61 of the Agreement between The Pullman Company and its Conductors, when:

1. The Company made an improper Operation of Conductors form and further, when the Company held Indianapolis District Conductor J. S. Coshow in Washington from the time he was released on Saturday, August 31, 1957 until reporting time of PRR train No. 59 on Sunday, September 1, 1957. We contend that Conductor Coshow's assignment operated on Saturday, August 31, when he should have returned in his assignment, and that Conductor Feehly should have been used in the assignment on train No. 59 departing on September 1.

2. Because of this violation we now ask that Conductor Feehly be credited and paid just as though he had been assigned to the regular assignment on train No. 59 on September 1, and also for a deadhead trip Indianapolis back to Washington.

Rule 31 and the Memorandum of Understanding Concerning Annulment of Runs 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 rules, or parts thereof, directly applicable to the dispute are quoted as follows:

Coshow but asserted that (1) Coshow's assignment operated on Saturday, August 31, 1957, (2) that Coshow should have been returned to Indianapolis on Saturday, (3) that a Washington District Conductor (Conductor Feehly) should have been assigned to operate Washington-Indianapolis on Sunday and (4) that the Washington District Conductor should be credited and paid for a service trip Washington-Indianapolis and a return deadhead trip Indianapolis-Washington. However, in the case filed in behalf of Indianapolis Conductor Rood, who, like Coshow, regularly operated in Line 6584, the Organization adopted a different theory and asserted that when Conductor Rood was returned to Indianapolis on Sunday, October 20, 1957, instead of Saturday, October 19, (1) that he was held in Washington beyond his scheduled layover and was returned to Washington "outside of his assignment" and (2) that he was entitled to held-for-service time in Washington and in Indianapolis on that basis. In the case filed in behalf of Washington Conductor Stiffler for alleged violation of the Agreement on October 19, 1957, the Organization did not advance the theory it promulgated in the case filed in behalf of Washington District Conductor Feehly, but alleged that on Saturday, October 19, 1957, the Company "blanked" the Indianapolis conductor's regular assignment and alleged that Stiffler should be credited and paid for a service trip on Saturday rather than Sunday, between Washington and Harrisburg, instead of between Washington and Indianapolis, as in the Feehly case, and a return deadhead trip Harrisburg-Washington instead of Indianapolis-Washington.

The Company submits that the Organization has not assumed its burden of establishing facts 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 Conductor Coshow was properly operated in his assignment on September 1, 1957, and that no adjustment is due Conductor Feehly 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 in behalf of Conductor J. A. Feehly, Washington District, that The Pullman Company violated Rules 15, 36, 38 and 61 of the Agreement between The Pullman Company and its Conductors — also that Rule 31 and the Memorandum of Understanding concerning Annulment of Runs 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 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.

"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 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 (sic) shall specify in their applications their first choice, second choice, etc.

"Q-1. Where a regularly-established run is shortened or a portion of the run is discontinued, shall the remainder of the run be considered a temporary run?

"A-1. No. The remaining portion of the run shall be promptly bulletined.

"Known details of regular assignments, such as service hours, length of layover periods at home station and at away-from-home station 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. Forms 93.126, 'Operation of Conductors,' 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 (93.126) shall remain in effect until canceled by bulletin."

"MEMORANDUM OF UNDERSTANDING CONCERNING
ANNULMENT OF RUNS.

"It is hereby understood and agreed by and between The Pullman Company and its Conductors represented by the Order of Railway Conductors, Pullman System, that Management shall not annul a run which is discontinued for any reason for only one day (24 hours).

"If an assignment in a run or a run does not operate for any reason for only one day, the conductor shall be credited and paid held-for-service time as provided in Rule 9.

"Signed at Chicago, Illinois, this 20th day of December, 1950"

The Indianapolis operation designated as Line 6584 was operated between Indianapolis and Washington on trains 20-40-574 outbound and trains 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 20-40-574 operating daily except Saturday and trains inbound 59-31-21 daily except Saturday.

In the Conductors Form under remarks it notes 24 hours layover 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 when the Company held the Indianapolis District Conductor out of his assignment and because of this Claimant should have been used on train 59 departing on September 1.

The record shows that train 59 carrying Line 6555 did in fact operate on Saturday notwithstanding that it was stated in the Conductors Form that it was a 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 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 changes the fact that train 59 with Line 6555 did in fact operate on Saturday.

We think 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.