

Award No. 10710

Docket No. PC-11410

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 H. N. Chancey, Penn Terminal District, that The Pullman Company violated Rule 31 of the Agreement between The Pullman Company and its Conductors, when:

1. Conductor W. C. Apgar, who was the successful applicant to Bulletin No. 63, was permitted to refuse to accept the assignment as posted in Bulletin No. 63.

We further contend that Conductor Apgar was not eligible to displace Conductor Chancey on April 26, 1958, from the Conductor run on PRR-Sou-A&WP-L&N trains 149-37 and 98-118, designated as line 6872. By permitting Conductor Apgar to displace Conductor Chancey, Rule 37 of the Agreement was also violated.

2. We now ask that Conductor Chancey be credited and paid for each trip in the above run that he has been denied the right to operate until the run was rebulletined in accordance with the rules of the Agreement.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing an 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 Rules directly applicable to this dispute are quoted as follows:

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

Agreement. Numerous awards of the National Railroad Adjustment Board hold that the rights of the parties must be determined by interpreting the rules as written, that the Board has no authority to modify or amend the provisions in any way, that any change must be accomplished through negotiations between the parties. On this point, the Board stated in pertinent part in Third Division Award 6291, as follows:

" . . . this Board is not authorized or permitted to revise or amend the governing rules of the Agreement. Nor can we speculate as to what the intention of the parties may have been when the Agreement was written. We are required in determining the rights of the parties to interpret the Regulations as they are written in the Agreement and we have no authority to modify or amend the provisions in any way. This must be done only by negotiation between the parties. This has been held in numerous Awards by the Board, and we cite Nos. 5703, 2491 and 4439 as expressing the holding of the Board."

In Third Division Award 6365, the Board stated it was not authorized to add or detract a meaning, which meaning was clearly not the intention of the parties to the Agreement. In pertinent part the Board stated as follows:

"It is the duty of this Board to interpret the rules of the Agreements as they are made. We are not authorized to read into a rule, that which is not contained, or by an award add or detract a meaning to the Agreement which was clearly not the intention of the parties. Many awards have been made by this Board, on this subject, and we refer to only a few as affirming our position. See Awards 4439, 5864, 5971, 5977."

In Third Division Award 5079, the Board cited Award 2622, in which the Board set forth the principle that it is an elemental rule the parties should negotiate to make certain that which has been uncertain. In this connection the Board stated in Award 5079, as follows:

"This Board has consistently held by a long line of awards that the function of this Board is limited to the interpretation and application of agreements as agreed to between the parties. Award 1589. We are without authority to add to, take from, or write rules for the parties. Awards 871, 1230, 2612, 3407, 4763."

CONCLUSION

In its ex parte submission the Company has shown that when Conductor Apgar was displaced from his position in Line 6524, effective April 21, 1958, he properly was permitted to displace junior Conductor Chancey. Also, the Company has shown there has been no violation of the provisions of Rules 31 and 37. Finally, the Company has shown that awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim of the Organization 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: On October 10, 1958 the Carrier posted Bulletin No. 63 advertising vacancy in Line 6872 between New York and New Orleans on PRR-Sou-A&WP-L&N trains 149, 118, 37, 98, and 38.

On April 11, 1958 Conductor Apgar filed application for the vacancy. At the time he was operating in Line 6524.

On April 21, Conductor Apgar was notified that he was being displaced from his regular assignment in Line 6524 by a senior conductor.

Apgar, at this time, inquired regarding the bid he had made for Line 6872 and was told that the bids had been closed, but no awards made.

Apgar, then under Rule 27, displaced a junior conductor on one side of Line 6872.

On April 22, 1958 Apgar notified the District Office that he desired to withdraw his application to Bulletin 63 on which he had bid.

The Carrier allowed him to withdraw the bid and exercise replacement rights on 6872 as the senior man.

The Claimant who was displaced filed this claim alleging that the Carrier violated Rule 31 when it allowed Apgar to withdraw his application once the bids had been closed on the bulletined job.

The issue in this case is whether or not the Carrier can allow the withdrawal of the bid after the bids are closed but the award has not as yet been made.

The pertinent parts of Rule 31 and 37 which are involved in this case read as follows:

"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 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.

Q-1. The above Rule establishes a five-day award period. On which of these five days shall the award be made?

A-1. The award shall be made on the day within the five-day period which results in the least possible lost time for the conductor or conductors to whom the award is made."

"RULE 37. Displacement Rights of Conductors. (a) A conductor displaced from his regular assignment may apply for and shall have the right, fitness and ability being sufficient, to occupy any assignment in his home station (any assignment in runs operated by the district where the conductor's name appears on the seniority roster)

where his seniority is greater than that of a conductor in such assignment, except that a conductor remaining in a run as provided in the second paragraph of Rule 33 shall not be displaced from the run during the bulletining and award period. Displacement shall be made at the designated home terminal of the assignment.

"The right to apply for another assignment must be exercised within 10 days (240 hours) from the time and date of displacement, except as provided in paragraph (c) hereof.

"(b) A conductor shall signify his intention of making a displacement to the designated official at least 2 hours prior to the reporting time of the assignment into which displacement is to be made. The intention of making a displacement shall be confirmed in writing.

"A conductor who has signified his intention to displace into a specific assignment shall immediately be considered as assigned thereto and shall be permitted to enter the assignment within 2 hours before his layover or vacation expires. A conductor displacing into a run prior to the expiration of his layover shall be compensated for such service as provided in Rule 24.

"The conductor displaced shall be immediately notified of his displacement."

In the present case, Conductor Apgar had certain seniority rights under the contract. He had the right to bid for the vacancy in question and likewise he had the right to displacement as the senior Employee.

It need not be said that seniority rights are most valuable to the individual and before they are disturbed this Board should proceed with caution.

We have carefully studied the Rules involved in this issue and the Board finds no language in them which would prohibit the bidder from withdrawing his bid or the Carrier from accepting it under the circumstances and facts of this case.

Therefore, 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 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 Contract 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 26th day of July 1962.