

**Award No. 10870**  
**Docket No. PC-12742**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Harold Kramer, Referee**

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**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 R. E. Collins, Cincinnati District, that The Pullman Company violated the rules of the Agreement between The Pullman Company and its Conductors, with special reference to Rule 38, when:

1. Under date of July 26, 1959 it failed to assign Conductor Collins to Main 1439 on second section of L&N Train #99 from Cincinnati, Ohio to Louisville, Kentucky.
2. Because of this violation we now ask that Conductor Collins be credited and paid just as though he had been properly assigned, that is, for a service trip Cincinnati to Louisville, and for a dead-head trip Louisville back to Cincinnati.

**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.

**II.**

For ready reference and convenience of the Board the pertinent paragraphs of Rule 38, directly applicable to this dispute, are quoted:

**"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

In its initial claim (Exhibit A, pp. 1-2) the Organization asserted that if "proper arrangements had been made," later designated "proper precautions" (Exhibit A, p. 4), the situation complained of would not have occurred. Subsequently, in the hearing Local Chairman Hendry stated specifically that Management should have known "sufficiently in advance" that this assignment was coming up and called Conductor Collins to protect it (Exhibit A, p. 5). In reply, Management's representative pointed out that the Company was not aware until 8:30 A. M. that a conductor would be needed on the second section of L&N train 99 (Exhibit A, p. 6). Further, the Union Terminal Company did not inform the Company that the cars in question would be placed on the second section of train 99 (Exhibit A, p. 6). Additionally, in the hearing the Organization argued to the effect that Management should have known about the assignment prior to 8:30 A. M., July 26, inasmuch as it was known by the Union Terminal Company at approximately midnight on the night of July 25-26 (Exhibit A, p. 5). In this connection Management's representative pointed out that the Company does not maintain a 24-hour operation for scheduling assignments, that the office closes at 5:30 P. M. and opens at 8:00 A. M. Also Management's representative cited Third Division Award 8688 (Edward A. Lynch, referee) in support of the Company's position, and pointed out that under **OPINION and AWARD** of the National Mediation Board, Special Board of Adjustment No. 199 (Emmett Ferguson, Arbitrator), rendered September 6, 1957, the Board stated it would be unreasonable to expect the Company to keep a supervisor overtime several hours simply to await the calling time of an early morning assignment when the same call could be made before the supervisor went off duty. As applied to the instant case, it would be unreasonable to expect the Company to assign a night supervisor to duty prior to the opening of the district office because of the possibility of an early morning assignment arising prior to the time the district office is scheduled to open.

### CONCLUSION

In this ex parte submission the Company has shown that Management complied with the provisions of Rule 38 when on July 26, 1959, it assigned Conductor Howard to the emergency assignment on the second section of L&N train 99. Also the Company has shown that neither the rules of the Agreement nor awards of the Board contemplate that the Company maintain night supervisors on duty to make emergency assignments in the manner contended for by the Organization.

The claim of the Organization is without merit and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On July 20, 1959 both the Pennsylvania and L&N Railroads issued notice that a military movement, designated as Main 1439 consisting of four sleepers, would arrive in Cincinnati, 7:35 A. M. July 26, 1959, via P.R.R. train #77. The notice further advised that the four sleepers would depart Cincinnati, 9:00 A. M. same day via L&N train #99 for Louisville, Kentucky.

The four sleepers occupied by military personnel arrived in Cincinnati on July 26, as scheduled on P.R.R. train #77. These four sleepers were not placed on regular L&N train #99 but were placed on a second section of L&N #99. This created the need for a conductor assignment.

This extra assignment on L&N 2/99 was given to Conductor R. J. Howard, Cincinnati District.

The Organization contends that this assignment should have been given to Conductor R. E. Collins under Rule 38. The pertinent portions of the Rule reads as follows:

**“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).

\* \* \* \* \*

(c) A regular signout period shall be established in each district, at which time assignments shall be made for a succeeding 24-hour period. Assignments shall be made by Management as early as is reasonably possible during the signout period. Such 24-hour period shall be designated as a signout day, and the specific signout period of the signout day shall be determined by local conditions. The signout period shall be not less than 30 minutes nor more than 3 hours in length. The local chairman shall be notified in writing by the district representative at least 5 days in advance of any change in the schedule of the signout period or the signout day and bulletin shall be posted for information of the conductors.

Until credited and assessed hours have been acquired in the current month, extra conductors shall be assigned in accordance with their credited and assessed hours for the preceding month, the conductor with the least number of such hours to be assigned first, continuing until all conductors in this group have been assigned, after which the conductor with the least number of hours accumulated in the current month shall next be assigned. When credited and assessed hours have been acquired in the current month, extra conductors shall be similarly assigned but upon the basis of their credited and assessed hours for the current month. Assignments remaining unfilled during the signout period because of an insufficient number of extra conductors available during the signout period which have a reporting time prior to the beginning of the next signout period shall remain unfilled until a reasonable time before the reporting time of such assignments.”

The crux of the matter revolves about the fact that the Organization contends that Collins was not used because of Carrier negligence or error and the Carrier contends that this was an emergency situation and that paragraph (a) of Rule 38 provides that all extra work of a district, including work arising at outlying points under the jurisdiction of that district, shall be assigned to the extra conductors of that district when available.

Question 9 and answer 9 which appears in the record on page 36 defines the term available as follows:

“Q-9. What is meant by ‘available’ as used in paragraph (a) of this Rule?

A-9. 'Available' means that the conductor entitled to an assignment can be contacted and assigned and can reach the point where he is required to report by scheduled reporting time. However, an extra conductor who reports at his home terminal after the assignments have been made for the signout day shall not be privileged to displace any of the local extra conductors already assigned, but may displace a regularly-assigned conductor or a foreign district conductor assigned to a movement not on a direct route towards his home station (regularly-assigned conductor to be displaced first)."

The transcript of the minutes of the initial hearing held on September 4, 1959 under this claim identified in the Carrier records as C 59-89 follows in part. Mr. J. R. Hendry is the Local Chairman, Order of Railway Conductors and Brakemen - Pullman System and the Pullman Company is represented by Mr. R. C. McCarthy and Mr. M. Giesecker.

"MR. McCARTHY: Well, Mr. Hendry, do you agree that the Company did not know there was a conductor requirement on second 99 until Mr. Dole was furnished that information by Conductor Fagin?"

MR. HENDRY: That may be a fact, but I say that they should have known.

MR. McCARTHY: Do you agree that after Mr. Dole learned of the requirement that he did everything he possible could under the Agreement?

MR. HENDRY: Mr. Dole, yes.

MR. McCARTHY: Then your only argument in this case, as I see it, is that Management must pay this claim because they didn't know about a need for a second conductor on 99 until after 8:30 a.m. and they should have known about it before that time, is that correct?

MR. HENDRY: That is correct. I say it is Management's responsibility that they know.

MR. McCARTHY: Was there any violation of the Agreement, then?

MR. HENDRY: Well I say this that they should have known, somebody should have been contacted and let them know that this condition existed.

MR. McCARTHY: I have nothing further."

\* \* \* \* \*

"MR. McCARTHY: What time?"

MR. HENDRY: It was known here at the Terminal at 12:50 A.M.

MR. McCARTHY: Well, Mr. Hendry, I thought we had disposed of that 12:50 A.M., because Mr. Dole didn't know about it until he was informed by Conductor Fagin who regularly operated on L&N 99 that the cars were to be attached to a second section. Now the Company has no responsibility to furnish a conductor for an assignment until it is a known assignment. If the railroad company didn't advise us, how could we fill it.

If you are trying to argue that this was an emergency assignment that wasn't filled by a conductor and therefore a conductor should be paid, it would be an emergency; but a conductor was assigned and handled this movement.

MR. HENDRY: We are not claiming that.

MR. McCARTHY: We filled this assignment with a conductor in accordance with Rule 38, Question and Answer 9. The only man in the judgment of the clerk who could get over to Latonia was Conductor Howard, who lived near there. You don't object to that action, do you?

MR. HENDRY: Yes.

MR. McCARTHY: Who was he going to get, somebody who didn't live nearby?

MR. HENDRY: I don't say that Dole shouldn't have made the assignment like he did. But, don't you have anyone here before 8:00?

MR. GIESEKER: We have someone who comes in in the morning, but Mr. Dale is in the office when it opens at 8:00.

MR. HENDRY: Well, isn't there a man who comes here for platform duty around 7:00 o'clock in the morning?

MR. GIESEKER: Between 7:00 and 7:30, myself or Mr. Johnson or Mr. Hunt, whoever is on that morning.

MR. HENDRY: I say this. I think that there was sufficient time to find out that such a condition existed and it shouldn't have been left waiting until the train left practically before the man knows that there is going to be a second section."

The Carrier does not deny that the Terminal Company received a message at or about 12:50 A. M. July 26, advising that Main 1439 would be run as 2/99. Nor that a platform man who comes on duty at 7:00 A. M. or 7:30 A. M. could not have ascertained the information relative to the above referred to message but simply that the clerk was notified at 8:30 A. M. that a Conductor is required. We cannot hold to relieve the Carrier from the responsibility to ascertain information, readily available to them, regarding a deviation from an anticipated operations. The fact is that the Claimant should have been called to ascertain his availability. He was not called. It has been held by this Board in Award 2942 that "A party cannot ordinarily assert his own negligence or want of foresight as an unavoidable emergency." We hold that the claim should be sustained.

**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 violated.

**AWARD**

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1962.