

Award No. 10888

Docket No. PC-12041

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, 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. G. Kosarek, St. Louis District, that The Pullman Company violated the Agreement between The Pullman Company and its Conductors, with special reference to Rule 38, when:

1. Under date of August 15, 1959, Conductor C. G. Kosarek was deprived of an assignment on PRR trains 4 and 3, designated as Line 4083, St. Louis to New York City and return. The Company used a conductor who was not eligible for this assignment.
2. Because of this violation we now ask that Conductor Kosarek be paid 6 days, the same number of days paid the conductor improperly used to fill the assignment.

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.

The established signout period for the St. Louis District is 11:00 A. M. to 12:00 o'clock noon. The signout day is established 3:00 P. M. to 2:59 P. M. the following day. On August 15, 1959, the following seven known assignments were to be filled:

"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."

Additionally, in Third Division Award 7362, the Board, under **OPINION OF BOARD**, held:

"The burden of establishing facts sufficient to require the allowance of a claim, (and proper language in the agreement covering the situations), is upon those who seek the allowances . . ."

CONCLUSION

In this submission, The Pullman Company has shown that none of the provisions of Rule 38 was violated in connection with the assignment given Conductor Kosarek at St. Louis on August 15, 1959. Also, 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.

The Company affirms that all data submitted herewith in support of its position heretofore have been presented in substance to the employee or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case the Organization contends that Conductor C. G. Kosarek was deprived of an assignment on August 15, 1959 on PRR Trains 4 and 3 designated as Lines 4083 St. Louis to New York City and return and ask that Conductor Kosarek be allowed 6 days pay for the alleged violation by the Pullman Company of Rule 38 of the applicable Agreement.

The record discloses that after the Signout Period on August 15, 1959 Conductor requirements remained unfilled because of an insufficient number of available extra Conductors on the extra Board. One for Station Duty, St. Louis, reporting time 7:45 A. M. August 16 and one for PRR Trains 4-3 St. Louis to New York and return Line 4083, reporting time 8:10 A. M. August 16. The Signout Clerk made contact with Conductor N. L. Hach at 3:00 P. M. August 15 and despite the fact that Conductor Hach had been granted permission to be unavailable until August 16; the Signout Clerk admittedly, erroneously assigned Conductor Hach to Line 4083 with reporting time of 8:10 A. M. the following morning, August 16, 1959, Conductor Kosarek arrived St. Louis at 11:00 P. M. August 15 and was released from service at 11:15 P. M. Following his release Conductor Kosarek had 92:00 credited and assessed hours, the fewest such hours of the then available extra Conductors, and he was assigned to the first Conductor requirement i.e., Station Duty with reporting time of 7:45 A. M.

In order that there may be no confusion as to the specific provisions of Rule 38, applicable in this case, we herein quote the same as appearing in the Agreement between the parties effective September 1, 1957.

"OPERATION OF EXTRA CONDUCTORS

"Rule 38 . . .

"(c) A regular signout period shall be established in each district, at which time assignments shall be made for a succeed-

ing 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, and assignments occurring after the close of 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.

"Road service assignments and deadhead assignments shall first be grouped and shall be assigned chronologically with regard to time conductors are required to report for duty. Thereafter station duty assignments shall be made chronologically with regard to time conductors are required to report for duty . . ."

The Company maintains that the difference between the Company and the Petitioner in this dispute is simply:

1. The Petitioner contends Conductor Kosarek was deprived of a road service assignment to which he was entitled, because Rule 38 (c) requires that road service assignments shall be made in advance of station duty assignments, even though such assignments are made after the close of the signout period.
2. The Company contends that nothing in Rule 38, or in any other rule of the working Agreement, requires that when assignments are made after the close of the signout period, station duty assignments must be made last and that Conductor Kosarek was not deprived of the assignment to which he was entitled.

It is insisted by the Petitioner that if the road service assignment and the Station Duty assignment had been held unfilled until 11:00 P. M. August 15, Conductor Kosarek would have been due, on the basis of his total credited and assessed hours at that time, the first of the two assignments to be filled, which, under the Petitioner's theory, was the road service assignment.

The Company contends that if both of the assignments had been held unfilled until 11:30 P. M. August 15, the time at which the Pullman Representative on duty filled the Station Duty assignment, Conductor Kosarek, by virtue of his total credited and assessed hours at that time would have been entitled to the first of the two assignments to be made, being that of Station Duty, and that Line 4083 assignments next would have been awarded to those conductors available with the next lowest number of total credited and assessed hours and that although the Company erred, when it assigned Conductor Hach to service in Line 4083 on the afternoon of August 15 the Company's oversight did not effect Conductor Kosarek's rights of assignment, inasmuch as he received the assignment to which he was entitled.

Your Board finds from this record that the Company's contention that the third paragraph of Section (c) of Rule 38 applies only during the Signout Period and that its provisions do not apply to assignments remaining unfilled during the Signout Period because of an insufficient number of extra Conductors available, is unsound and cannot be sustained, with respect to the two unfilled assignments remaining at the end of the Signout Period on August 15, 1959 involved herein. We do not find under the particular facts of this case that any emergency existed and do therefore find that the cited Awards involving emergency assignments are not applicable to this case. We further find that Petitioner has met its burden of proof in this record and that for the Board to deny this claim would require a construction of the Agreement not stated in its provisions. This Board cannot add an exception which does not exist in the specific terms of the Agreement.

It is the duty of this Board to interpret the rules of the Agreement as they are met. We are not authorized to read into a Rule, that which is not contained therein, or by an award add to or detract from the clear and unambiguous provisions thereof. 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, 6365.

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 7th day of November 1962.