

Award No. 10935  
Docket No. PC-11897

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Wesley Miller, 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 H. G. Hutt, Philadelphia 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 September 11, 1959, Conductor Hutt was not given an assignment to Main 1660 from Philadelphia, Pa., to Columbus, Ohio, because the Company overlooked this assignment during the scheduled signout period.

This assignment had a reporting time of 11:45 A.M., September 12.

2. Because of this violation, we now ask that Conductor Hutt be credited and paid a total of 16:05 hours for the extra service trip Philadelphia to Columbus, held-for-service time in Columbus in accordance with Rule 9, and a deadhead trip reporting in Columbus at 7:00 P.M., September 13 and released in Philadelphia at 7:20 A.M., September 14, or a total of 10:15 hours for the deadhead trip.

**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 signout period in the Philadelphia District is 11:00 A.M. to 11:30 A.M. The signout day is from 2:00 P.M. to 1:59 P.M. the following day.

During the signout period on September 11, 1959, there were four known assignments, as follows:

claim, the Third Division ruled that the violation was technical in nature and resulted in no loss to the claimant and that the claimant was not entitled to the penalty payment requested.

Also, in Third Division Award 5306 (Referee H. Wyckoff), disposing of a claim in which a clerical employe (janitor) requested compensation of 30 minutes per day at the rate of time and one-half account being deprived of the right to perform one task rather than another, the Board denied the claim in so far as compensation was requested, stating that "The usual award is for the difference in the rates of pay between the position held by the Claimant and the position wrongfully denied him. . . . There was no such loss here because the basic rates of pay for the two positions were identical."

In citing the above Award, The Pullman Company has not overlooked the Memorandum of Understanding Concerning Compensation for Wage Loss in effect between the Company and its conductors. This Memorandum as it relates to claims reads as follows:

"Similarly, it is understood that if a Pullman conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the Agreement, effective September 21, 1957, and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month."

It will be observed that the above Memorandum has application only to a claimant conductor who "was not given an assignment to which he was entitled . . ." In the case at hand, as previously shown, the claimant conductor (Hutt) was not entitled to the Main 1660 assignment, and the conductor who was entitled to the assignment (Johnson) was given and properly performed the assignment. Accordingly, the Memorandum has no application to the case at hand.

### CONCLUSION

The Pullman Company has shown in this ex parte submission that if the assignment on Main 1660 had been included in the September 11, 1959, conductor requirements, Conductor Johnson, not Conductor Hutt, would have been entitled to the assignment. The Company also has shown that Conductor Johnson was given the assignment with Main 1660 and that he performed that service. Additionally, the Company has shown that the claimant (Conductor Hutt) was deprived of no rights as a result of not having received the assignment. Finally, the Company has shown that Awards of the National Railroad Adjustment Board have established the principle that unless penalty payments are stipulated in the working Agreement, none is required.

The Organization's claim 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:** It appears to our satisfaction that Conductor Hutt was contractually entitled to the trip assignment referred to in the above Statement of Claim by virtue of the applicable provisions of Rule 38(c) of the Agreement of the parties; and that since he was deprived of it, he

should be compensated in accordance with the Memorandum of Understanding, which is incorporated in said agreement and provides in pertinent part as follows:

“ . . . Similarly, it is understood that if a Pullman conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the Agreement . . . and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month . . . ”

Please see Award 7067.

The material facts are not in dispute: Carrier did “technically” violate Rule 38(c); Grievant Hutt's position on the extra conductors list would have — at least under ordinary circumstances — entitled him to the disputed assignment; and he was both available and qualified to perform same.

Carrier's justification for denial of the Claim is based upon ingenious argumentation. It contends on the one hand that since there were four extra conductor assignments to be filled on September 11 and only three conductors on the extra list, it necessarily follows that the fourth conductor would have to be recalled from furlough. This fourth employee, W. J. Remy, according to Carrier, would have been entitled to the second of the four extra assignments, and grievant would have worked the station assignment he actually performed on the date in question — the net result being that Conductor Hutt would have been on the same work assignment that he would have been on if the contract of the parties had been complied with strictly.

We do not find the above reasoning sufficiently persuasive. The record does not show that Conductor Remy, or any other furloughed conductor, was available for any of the four assignments; it does show that no furloughed conductor was notified or recalled. Moreover, the Employees allege (and the Carrier does not specifically deny) that the Carrier has not consistently recognized the rights of furloughed conductors to be recalled in situations similar to the one at hand. In view of all of these circumstances, the contentions of the Carrier in this regard must be rejected. The statement made in Award 6597 seems especially apropos:

“ . . . Based on what actually happened, therefore, this is a good claim. This being so, it should not be whittled or defeated by conjecture and supposition about what might have been the case had the Carrier complied with the Rule.”

On the other hand, Carrier suggests that Extra Conductor Johnson could have been rightfully entitled to two of the three trip assignments. We cannot agree. If (under the circumstances before us) he had been assigned to two road trips during the applicable established sign-out period, the “double assignment” portion of Rule 38 would be transgressed.

An affirmative award is in order.

**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 21st day of November 1962.