

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Preston J. Moore, 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 F. Nelson, Salt Lake City Agency, that the Company violated Rule 38 (c) when:

1. Under date of July 11, 1960, Conductor Nelson was not given an assignment to report in Salt Lake City at 7:15 A. M., July 12th, to take charge of cars arriving on UP Trains 36-310, thence extra service D&RG Trains 8-2 Colorado Springs — deadhead to Denver, Colo. Conductor G. W. Wortley was given this assignment instead of Conductor Nelson.

2. We now ask that Conductor Nelson be credited and paid, under applicable rules, just as though he had been properly assigned.

**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 the convenience of the Board, the pertinent parts of the applicable rules are quoted as follows:

**RULE 38. Operation of Extra Conductors.**

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

thereupon made chronologically with regard to time conductors were required to report for duty, Conductor Nelson being assigned first, reporting time 6:25 P. M., July 11. Conductor Wortley was assigned to the second station duty assignment, reporting time 7:30 A. M., July 12.

A review of the record of this case shows that the Organization's claim that Nelson is entitled to be paid for a service trip Salt Lake City-Denver and return deadhead service is based on the theory that the "double assignment;" i.e., the station duty assignment plus the road service assignment Salt Lake City-Denver assigned to Conductor Wortley on July 11, was not a double assignment but was a single assignment, a road service assignment having a reporting time of 7:15 A. M., July 12, and should have been assigned first during the July 11 signout period. In this connection, the Company wishes to state that the rules of the Agreement permitted the Company on July 11 to exercise its option of either assigning a conductor to station duty for the layover time of the two tour service cars and assigning another conductor during the July 12 signout period to the service requirement between Salt Lake City and Denver or of assigning a conductor to extra service with instructions to protect the two tour service cars during their layover at Salt Lake City and to handle on the road the car destined Colorado Springs, together with the car of Line 4422. In the instant case, the Company elected to assign a conductor on July 11 to perform station duty, a type of assignment which could not be made if the Company contemplated assigning a conductor to the road service trip on July 11. However, through error, the relief clerk made a double assignment; i.e., gave Conductor Wortley a station duty assignment which came within the signout day of July 11 and a service assignment which fell within the signout day of July 12. As previously pointed out, the Company admitted this error, including the improper annulment of the assignment, and corrected such error by paying Conductor Wortley for the service trip, Salt Lake City-Denver, and the return deadhead trip. On the other hand, Conductor Nelson received the assignment to which he was entitled on the basis of his credited and assessed hours and no adjustment is due.

Finally, the Company calls attention to the fact that the Board has frequently held that penalties, in situations similar to the instant case, cannot be pyramided (Third Division Awards 7370, 6869, 6750, 6021, 5549, 5423).

### CONCLUSION

In this ex parte submission the Company has shown that on July 11, 1960, Conductor Nelson received the assignment to which he was entitled as provided in paragraph (c) of **Rule 38. Operation of Extra Conductors**. Also, the Company has shown that no adjustment is due him.

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:** This is a dispute between The Order of Railway Conductors and Brakemen, Pullman System and The Pullman Company.

During the regular signout period of July 11, 1960, in the Salt Lake City Agency, Conductors F. Nelson, G. W. Wortley and C. R. Condit were the first three conductors to be assigned with credited and assessed hours of 25:40, 31:30 and 33:40, the conductor with the lowest credited and assessed hours (Nelson) to be assigned first. The Salt Lake City office assigned Claimant Nelson station duty with the earliest reporting time. The office then assigned Conductor Wortley to an extra road service assignment with a reporting time of 7:15 A. M. July 12.

The Employees contend that The Pullman Company violated Rule 38 (c) which requires road service assignments to be made before station duty assignment.

The Carrier contends that it was in error in making the assignment to Conductor Wortley. That, in fact, it was a double assignment, one assignment of station duty and another of road service. The Company canceled the road service part and assigned it to Conductor Condit. Conductor Condit made the trip and was paid for it. Conductor Wortley filed a claim contending that his assignment could not be canceled and was paid for the trip. The Company contends that it should not have to pay three times for one trip or for one violation of the Rules.

The pertinent Rules are as follows:

“RULE 38 (b)

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“It is understood that Management has the right to annul an extra conductor's assignment under the following conditions:

“(1) When assigned in lieu of a regularly-assigned conductor who has been laying off and the regularly-assigned conductor reports for his assignment before scheduled reporting time.

“(2) When the cars in his charge are consolidated with cars of another train, or trains, that are in charge of a Pullman conductor, or Pullman conductors, except an extra conductor's assignment shall not be annulled when the cars in his charge are consolidated with the cars of another train that are in charge of a Pullman conductor and, by such consolidation, the need for an additional conductor is created.

“(3) When a foreign district conductor is available for service as provided in paragraph (e) of this Rule.

“(4) When he is filling a regular assignment at an outlying point under the jurisdiction of his home station and he is awarded a regular assignment under the provisions of Rule 31; when a reduction of force is necessary under the provisions of Rule 40; or when he is to be transferred under the provisions of Rule 41 or 42.

“(5) When an assignment does not materialize after the assignment has been made because a railroad annuls the operation of a train or cancels extra cars to the number that a conductor is not required as provided in the rules.

"It is understood the Management has the right to change an extra conductor's assignment when the destination of his train is changed en route, in which event the conductor will continue to the new destination."

"RULE 38 (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, 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 dispute centers on the character of the assignment given Conductor Wortley during the signout period on July 11. If this assignment was in its entirety, a road service trip, then it follows that Conductor Nelson was entitled to the assignment. During the signout period of the 11th.

The Company could have assigned one Conductor to the station duty and a second assignment of road service to another Conductor. They also had the right to assign a Conductor the road service and the lay-over. The lay-over was not station duty for the cars were en route and the Conductor was assigned to road service.

At the time the assignment was made we must assume that the Company intended to make a legal assignment under the Agreement. Although, the Company later considered it a double assignment we must believe that

at the time the assignment was made it was considered one assignment of road service.

Thus the Company violated Rules 38 (b) and 38 (c).

For the foregoing reasons, we believe 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 24th day of January 1963.