

Award No. 11109
Docket No. PC-11740

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, 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 A. M. Kimble, formerly of the Columbus Agency, that:

1. On April 1, 1959 Conductor A. M. Kimble, who was a regularly-assigned conductor, was improperly furloughed.

We further contend that under the terms of Rule 27 of the Agreement, when the Conductors' Columbus Agency Seniority Roster was consolidated with the Conductors' Seniority Roster of the Cincinnati District, that Conductor Kimble, who was regularly-assigned on C&O trains 47 and 46 designated as Line 6288 between Columbus, Ohio, Detroit, Mich., and Charlottesville, Va., should have been permitted to remain on his assignment until he was displaced in accordance with the rules of the Agreement.

2. Because of this violation we now ask that Conductor Kimble be credited and paid, under the applicable rules of the Agreement, for each trip he is denied the right to operate in his assignment, until such time as he is displaced in accordance with the rules of the Agreement.

EMPLOYES' STATEMENT OF FACTS: The Pullman Company, under date of March 12, 1959, advised that effective April 1, 1959 the Conductors' Seniority Rosters of the Columbus, Ohio Agency and the Cincinnati, Ohio District would be consolidated under the provisions of Rule 27.

Shortly prior to April 1, 1959 the names and dates of the Conductors' Seniority as shown on the Columbus Agency Conductors' Roster were as follows:

J. C. Torrie	7/28/23
S. A. Magaw	5/10/42
E. J. Spiers	2/22/43
C. E. Tompkins	3/ 7/43
A. M. Kimble	12/ 2/45

Finally the Company wishes to point out that if Management had proceeded in the manner contended for by the Organization; i.e., had permitted two junior conductors to operate in service when senior conductors of that district were on furlough, the Organization undoubtedly would have filed claim in behalf of the senior conductors on furlough. Since the Company properly recognized the basic principle of seniority, which requires that junior conductors, whether in extra or regular service, be furloughed in the event conductors senior to them are on furlough, the Organization alleged violation of Rule 27 on the unsound premise that the final sentence of that Rule precluded such action. In this connection the Company wishes to state that the Organization has not established and cannot establish that the Company failed to comply with the provisions of Rule 27, with especial reference to the final sentence of that rule. As previously pointed out, no run was bulletined as a "new run;" all conductors whose seniority permitted them to operate in service remained in service; only the sides of the run occupied by conductors whose seniority did not permit them to operate in service were bulletined as vacancies.

Conclusion

In this ex parte submission the Company has shown that Conductor Kimble was allowed full seniority on the Cincinnati-Columbus consolidated roster, effective April 1, 1959, and that all conductors whose seniority permitted them to operate in service were permitted to work. Also the Company has shown that at the time of consolidation no runs in existence were bulletined as new runs. Finally the Company has shown that it complied with the provisions of Rules 27, 40 and 39 and that no other rule of the Agreement was violated.

The Organization's claim in behalf of Conductor Kimble is without merit and should be denied.

All data presented herewith in support of the Company's position have theretofore been presented in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about April 1, 1959, Conductor Kimble was a regularly assigned Pullman Conductor on the C&O trains 47 and 46 between Columbus, Ohio; Detroit, Michigan; and Charlottesville, Virginia. The conductor seniority roster of the Columbus Agency and of the Cincinnati District were consolidated as of April 1, 1959. Conductor Kimble worked out of the Columbus Agency prior to April 1, 1959. The consolidated roster was to be known as the Cincinnati District Conductors' Seniority Roster, and the conductors affected would perform the same work formerly handled by the conductors on the separate rosters.

Conductor requirements as of April 1, 1959, were 25 regular conductors, eight extra conductors and, adjusting for errors made in the record, conductors below position No. 35 (and not 34) according to the interpretation of the Company, were required to be furloughed.

The consolidated rosters effective on April 1, 1959, listed 49 conductors and the Claimant was the most junior conductor among them.

Rule 27, with reference to consolidation of seniority rosters, reads as follows:

"When conductors' seniority rosters are consolidated the conductors affected shall be allowed full seniority on the consolidated roster. Runs in existence shall not be bulletined as new runs at the time of consolidation."

The Organization claims that the Pullman Company violated Rule 27 of the Agreement between the parties when, on or about April 1, 1959, it **unilaterally removed conductor Kimble** from his regular assignment and furloughed him.

The Company takes the position (1) the consolidation of the Cincinnati districts was a proper exercise of the Company's prerogative to do so; (2) the Claimant was properly furloughed by the Company upon consolidating of the rosters. The Board agrees with the position of the Company that the consolidation of the Cincinnati District was a proper exercise of the Company's prerogative to do so. In Award 4560 (Whiting) this Board said:

"The only provision of the contract relating thereto is Rule 27, * * * , * * * . Certainly that rule does not require concurrence by the Organization for a consolidation of rosters or districts * * * . * * * In fact, the Organization does not contend that such action is required * * * ."

" * * * The absence of any requirement for concurrence by the Organization simply means that such action is one of the prerogatives of the Company * * * ."

Also, see Special Board of Adjustment No. 167 Award No. 7.

"In the absence of restrictive rule Carrier may consolidate districts at will."

The Company, in deciding who had the greater right to the available work under the consolidated rosters, effective April 1, 1959, attempted to determine this on the basis of seniority, and in doing so was trying to follow the first sentence of Rule 27, which reads: "When conductors' seniority rosters are consolidated, the conductors affected shall be allowed full seniority on the consolidated roster."

The Company says that no rule of the Agreement permits the Company to ignore the principle of seniority by permitting a conductor, even though he is on a regular assignment, to work when conductors senior to him are on furlough. The Claimant states that there is no rule in the Agreement which permits the Company to unilaterally remove a regularly assigned conductor from his run.

The Organization asserts that no reduction of forces occurred on April 1, or was necessary, and, therefore Rule 40 of the Agreement has no application in this dispute; and further that the Company actually increased the conductor forces in the Cincinnati District, as conductor R. W. Strothman was recalled from furlough. In this regard the Company contends that at the time of the consolidation reduction was necessary and did occur; that a force reduction was necessary so that the basic principle of seniority as it relates to the right of conductors to perform work, could be observed. The Company further contends that no rule of the Agreement permitted the Company to

ignore the principle of seniority by permitting a conductor, even though on regular assignment, to work when conductors senior to him were on furlough. The Company further maintains that whenever a conductor is furloughed a reduction in force has occurred, however temporary it may be.

In the instant case the Company furloughed four conductors, on April 1, 1959, namely R. D. Sinnard; J. R. Howard; H. T. May, Sr.; and A. M. Kimble.

The Organization contends under the enforcement of Rule 27 in the instant case, and under these circumstances, Kimble should not have been furloughed but should have been permitted to work his run. The Company maintains to the contrary that no rule of this Agreement requires under any circumstances that conductors be deprived of their seniority and that if they had allowed Kimble to stay on in his assigned run, they would not have been allowing other conductors, whose seniority was greater than Kimble's, full seniority under Rule 27.

The Claimant's theory is that Rule 27 does not contemplate disturbing the conductors who are in regular assignments at the time the conductors' seniority rosters were consolidated; that the run should not have been bulletined and that the fact that someone had displacement rights over Claimant is immaterial and the company should not have unilaterally removed him from the run unless and until someone did displace him in accordance with the provisions of the Agreement.

The Company further maintains that in bulletining the assignment of the Claimant they were not 'bulletining a new run' within the meaning of Rule 27.

After a careful examination of all of the rules quoted in the Agreement on both sides, it appears that what we must determine in this case is a proper interpretation of the last sentence of Rule 27, to-wit: "Runs in existence shall not be bulletined as new runs at the time of consolidation," and properly relate it to the first sentence of this same Rule.

In a dispute between the Pullman Company and the Order of Railway Conductors and Brakemen, covered by Third Division, Award 4433, with A. E. Wenke sitting as a member of the Board, under opinion of the Board it is stated:

"In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' Agreement as they are written. It is not our privilege or right to add thereto, and when a rule specifically lists a situation to which applicable, it thereby excludes all those not included therein."

Under Rule 31 there are certain circumstances designated when a run is to be bulletined. They are:

1. New runs
2. Each assignment (side) in a run that has preferred assignments
3. Temporary runs
4. Seasonal runs
5. Vacancies

In our case, since the run was in existence, under Rule 27 it could not be bulletined as a new run. Company maintains it was not bulletined as a new run. It was not what is known as a preferred assignment (side) because

these are runs where the home layovers of the assignments occurred on the same days of the week; it was not a temporary run, and it was not a seasonal run, so under Rule 31 the only theory on which it could be bulletined would be on the theory that there was a vacancy in the run. There was no vacancy in this run because it was occupied by Claimant Kimble, unless the unilateral action of the Company in furloughing Claimant Kimble created a vacancy. A careful reading of Rule 27 does not give the right to the Company to remove a regularly assigned conductor from his regularly assigned run and thereby create a vacancy, so that the run may be bulletined. When a conductor is awarded the assignment or run on the basis of his seniority, he is entitled to keep this run until such time as he is displaced, or resigns, in accordance with the rules of the Agreement.

The Company also contends that if conductor Kimble had been permitted to remain in his run he would have been furloughed at the time a force reduction was made on May 15, 1959. This may be true, but the record does not set forth facts sufficient for this Board to hold with certainty that Claimant would have been furloughed on May 15, 1959.

The Board finds that the Agreement has been violated and that Claimant should be credited and paid under the applicable rules of the Agreement for each trip he is denied the right to operate in his assignment until such time as he is displaced in accordance with the rules of the Agreement.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February, 1963.

Carrier Members' Dissent to Award 11109, Docket No. PC-11740

Award 11109 is in error in holding that the provision in Rule 27 reading "Runs in existence shall not be bulletined as new runs at the time of consolidations," means that no bulletining can occur for any reason. Clearly the Rule does not require that upon the consolidation of rosters, seniority or a rule (Rule 39) regulating the number of conductors on the extra board shall be ignored and junior conductors permitted to work while senior conductors remain on furlough.

For these reasons, among others, we dissent.

/s/ R. E. Black

R. E. Black

/s/ R. A. DeRossett

R. A. DeRossett

/s/ W. F. Euker

W. F. Euker

/s/ G. L. Naylor

G. L. Naylor

/s/ W. M. Roberts

W. M. Roberts