

**Award No. 11458**

**Docket No. PC-13500**

**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 A. E. Goodwin, St. Louis District, in which we contend that The Pullman Company violated the rules of the Agreement between the Company and its Conductors, with especial reference to Rule 25, when:

1. Under date of October 2, 1961, Conductor Goodwin was improperly displaced from his regular assignment on Wabash trains 2 and 3 between St. Louis and Detroit.

2. Because of this violation, we now ask that Conductor Goodwin be credited and paid for each trip that he lost from his assignment on trains 2 and 3 between October 2, 1961 and November 7, 1961, or for 12 round trips or a total of 36 days.

The Memorandum of Understanding Concerning Compensation for Wage Loss is also involved.

**EMPLOYES' STATEMENT OF FACTS:**

**I.**

There is an Agreement between the parties, bearing the 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 easy reference and convenience of the Board, the rules that are directly applicable to this dispute are quoted as follows:

**"RULE 47.**

**Reallocation of Runs.**

Except as provided in Rules 43 and 44, runs assigned to a district or agency shall not be reallocated to another district or agency with-

Subsequent to the receipt of denial Awards 3831 and 5734, it became apparent that the Organization had abandoned its position that liability for a single violation of a rule devolved upon the Company for as many times as there were employees who were indirectly or remotely affected by the single error or rule violation. This statement is borne out by examination of claims filed by the Organization, including some claims which it progressed to the Third Division, National Railroad Adjustment Board. Several examples of instances where the Organization did not pursue its original position on this principle are set forth on page 15 of the Company's Exhibit A.

In reverting in this dispute to the position it assumed in the claims decided by denial Awards 3831 and 5734, the Organization obviously is attempting to upset the principle established by the awards in question, despite the fact that for close to a decade after the issuance of Award 5734 in 1952, the Organization obviously abandoned its original position on the principle in question.

It should be noted for the record that the instant dispute involving Conductor Goodwin is the key case and that there are two additional cases lined up behind the Conductor Goodwin dispute. Obviously the Organization seeks to place a considerable monetary penalty upon the Company over a principle that has been firmly established by denial awards of the Third Division, National Railroad Adjustment Board.

#### CONCLUSION

In this ex parte submission the Company has shown that there was no violation of Rule 47 or of any other rule of the Agreement, including Rule 25 with respect to the exercise of seniority by Conductor McKenna in displacing Conductor Goodwin, effective October 2, 1961. The Company also has shown that the Memorandum of Understanding Concerning Compensation for Wage Loss has no effect in this dispute because it cannot be shown that there has been a wage loss resulting from the misapplication of the rules of the Agreement. The only misapplication of the rules of the Agreement that can be given consideration relates to the case of Conductor McKenna, whose claim was recognized and paid by the Company. Since Rule 47 was not misapplied in the case of Conductor Goodwin, he is not entitled to be paid for 36 days which he allegedly lost because Conductor McKenna in the proper exercise of seniority rights displaced him effective October 2, 1961. The Company has shown that denial Awards 3831 and 5734 of the Third Division, National Railroad Adjustment Board, support the Company in this dispute.

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

All data presented herewith in support of the Company's submission have heretofore been submitted in substance to the employee or his representative and made a part of this dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claim is as set forth above, and the material facts pertinent to the issues arising therefrom are not in dispute.

On September 24, 1961, Carrier reallocated the conductor run on MP-TP trains 1 and 2 between St. Louis, Missouri and Ft. Worth, Texas away from the St. Louis District to the San Antonio District — a run designated for accounting purposes as Line 3306. This was effected unilaterally and was subsequently admitted by Carrier to be a violation of Rule 47 of the Agreement of the Parties, which rule provides as follows.

"RULE 47. Reallocation of Runs.

Except as provided in Rules 43 and 44, runs assigned to a district or agency shall not be reallocated to another district or agency without conference and agreement between Management and the General Chairman."

Because of this reallocation, the four regularly-assigned conductors to said run, Corzine, McKenna, Paxson, and Litz, became displaced and the Organization filed a Claim in their behalf. The Company acknowledged its error; restored Line 3306; and by November 1, 1961, it had reinstated the four conductors to their former positions on said run. Moreover, it compensated each of them for all trips lost in accordance with the "MEMORANDUM OF UNDERSTANDING CONCERNING COMPENSATION FOR WAGE LOSS," which clause of the Agreement is quoted in pertinent part:

"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 . . ." (Emphasis ours.)

But, the Claim before us does not involve the conductors who were directly displaced because of the violation of Rule 47. This Claim arises because in the interim period (between the discontinuance of Line 3306 and the restoration of the four conductors to their regular assignments thereon), Conductor McKenna exercised his seniority and displacement rights to displace Conductor Goodwin, the Claimant herein, from that conductor's regular assignment on Wabash trains 2 and 3 between St. Louis and Detroit, Line 3563 in the same seniority district.

The Claim is that Goodwin should be compensated in the same manner as were the said conductors who directly lost their assignments by Carrier's violation of Rule 47 in reallocating Line 3306.

It appears that this Claim is based upon the following reasoning: that the improper reallocation referred to above proximately caused Claimant to lose his own assignment on Line 3563; that, but for this, his position on his run would have been undisturbed; and that (insofar as he was involved) Carrier's action automatically resulted in the violation of three other Rules of the Agreement: 35, 31 and 37.

Rule 25 of the Agreement reads:

"RULE 25 Basic Seniority Rights and Date.

(a) The seniority of a conductor, which is understood in this agreement to mean his years of continuous service from the date last employed, shall be confined to the district where his name appears on the seniority roster.

(b) No deductions shall be made from the seniority of conductors for time spent on authorized leaves of absence, furloughs, or sickness.

(c) In any district, the right to perform all Pullman conductors' work arising therein, as established by past practice and custom, shall

belong exclusively to the conductors having seniority in such district, subject to the exceptions of these rules herein otherwise contained."

Rule 37 of the Agreement provides in pertinent part:

"RULE 37. Displacement Rights of Conductors.

ply for and shall have the right, fitness and ability being sufficient, to occupy any assignment in his home station (any assignment in runs operated by the district where the conductor's name appears on the seniority roster) where his seniority is greater than that of a conductor in such assignment, except that a conductor remaining in a run as provided in the second paragraph of Rule 33 shall not be displaced from the run during the bulletining and award period. Displacement shall be made at the designated home terminal of the assignment.

The right to apply for another assignment must be exercised within 10 days (240 hours) from the time and date of displacement, except as provided in paragraph (c) hereof. \* \* \*

Since it is not in contention that Claimant had been improperly assigned to the run from which he was temporarily displaced by Conductor McKenna, it would seem that Rule 31 has no significant bearing on the issues now confronting us. Therefore, it is not quoted.

In considering the merits of the theory advanced by the Organization in support of the Claim, it must be noted that the argumentation of the Employees is most certainly not devoid of logic. Except for Carrier's violation of Rule 47 in regard to the St. Louis-Ft. Worth run, everything of Record indicates Mr. Goodwin would have remained undisturbed in the performance of his regular assignment on the St. Louis-Detroit run. However, in spite of this, Carrier's contention that there was no violation of the Agreement directly pertaining to Claimant appears correct.

Carrier did not violate Rule 25 — alluded to by the Employees in the Statement of Claim with "especial reference." The Record clearly shows that the seniority rights of Conductor McKenna were superior to those of Claimant in the St. Louis Seniority District. Assuming that Mr. McKenna was a "displaced conductor," there is no problem in regard to this Rule.

Rule 37 poses more difficult problems. The Employees contend that it applies only to a senior conductor who himself has been properly displaced and that absent this prerequisite, within the purview of the Rule, the right of displacement does not exist — or cannot be legally effected.

If such were the case, it necessarily follows that the Claimant herein was deprived of an assignment to which he was at the time entitled.

However, after much consideration, we are of the opinion that the syllogistical type of argumentation referred to above fails to prove the point the Organization wishes to make.

Rule 37 does not contain a provision that a senior conductor exercising his displacement rights thereunder must have been correctly displaced himself, nor are we entitled to assume that this requirement is implicit in the Rule itself.

If Rule 37 were construed in this qualified manner, it is possible that seniority rights could be impaired by the emergence of peripheral cases.

Although precipitated by Carrier's breach of contract, Conductor McKenna did become displaced, and, for all practical purposes, he was a "displaced conductor" to the same extent that he would have been if he had become displaced properly.

After its violation of Rule 47, which directly resulted in Conductors Corzine, McKenna, Paxson, and Litz, being deprived of the regular assignments to which they were entitled, Carrier did comply with the terms of the Agreement, i.e., seniority and displacement rights were properly recognized.

We do not condone Carrier's violation of the Collective Bargaining Agreement and are aware of the fact that such error can effect Employees other than those directly involved; however, this Division has exercised restraint in applying penalties that would reach beyond the Employees immediately affected by breach of contract. It is true that Awards 3831, 5734, and 9687 may be distinguished from the case at hand; however, they reveal a reluctance on our part to approve a "chain reaction" type of penalization.

We believe that restraint in this regard is prudent.

In view of all of the circumstances alluded to above, we are of the opinion that Rules 25, 31, 37, and 47 were not violated by the Carrier in regard to Claimant Goodwin.

Therefore, this Claim should be denied.

**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 there was no violation of the Agreement relating to Conductor Goodwin.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.