

Award No. 11459

Docket No. PC-13586

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, 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. T. Didiwick, Washington District, that:

1. Rule 64 (a) of the Agreement between The Pullman Company and its Conductors was violated by the Company on January 11, 1962, when two or more Pullman cars in service were operated on PRR train No. 126, Washington to New York, without a Pullman conductor being assigned.

2. Rule 38 was violated by the Company on this same date when the Company failed to assign Conductor Didiwick to this operation, this conductor being entitled to and available for the assignment.

3. Conductor Didiwick is entitled to credit and pay under appropriate rules of the Agreement (as interpreted by Third Division Awards 4562, 7067 and 9587) in the amount of not less than 6:50 hours, a minimum day, for an extra road service trip Washington to New York, and not less than 6:50 hours, a minimum day, for a deadhead trip New York to Washington.

4. Conductor Didiwick has been credited and paid in the proper amount for the extra road service trip Washington to New York. (See Exhibit No. 1)

5. Conductor Didiwick be credited and paid not less than 6:50 hours, a minimum day, for a deadhead trip New York to Washington.

Rule 25 and the Memorandum of Understanding Concerning Compensation for Wage Loss is also involved.

EMPLOYEES' STATEMENT OF FACTS:

I.

On January 11, 1962, Pullman cars operating under lines 6841 and 2014, enroute from Augusta, Ga. and Wilmington, N.C., respectively, to New York,

OPINION OF BOARD: Carrier does not deny that Rule 64 (a) of the Agreement was violated. The issue is how much compensation Carrier shall be required to pay because of the breach of contract.

Carrier contends that Item (5) of the "MEMORANDUM OF UNDERSTANDING CONCERNING THE MANNER IN WHICH CONDUCTORS SHALL BE PAID WHEN 2 OR MORE PULLMAN CARS OPERATE IN SERVICE WITHOUT A CONDUCTOR" of the Agreement spells out the manner in which a conductor shall be compensated in reference to a claim such as the one now before the Board.

Said Item (5) provides as follows:

"A conductor due an assignment involving a service trip from his home station to another district or agency, shall be credited and paid not less than 6:50 hours, a minimum day, for the service trip."

And Carrier alleges that it has complied with this provision fully.

This theory of the Carrier was rejected by the Board in our recent Award 9587, involving the same Parties and Collective Bargaining Agreement.

The Carrier makes an ingenious effort to distinguish the present case from the one decided in that Award; however, in our opinion this is a futile endeavor.

It is true that there were issues involved in the prior Award which are not before us here, but Award 9587 is very much in point in that it construes the Memorandum of Understanding referred to above as applicable to claims arising "... at outside points, where no conductor was available ..."

In this case, the Claim arose at a district where the Claimant conductor was available.

We have studied Award 9587 carefully and are not of the opinion that it is palpably erroneous.

Therefore, the Claim should be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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 27th day of May 1963.