

Award No. 11852
Docket No. PC-13920

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, 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 I. F. Sammons, Detroit District, that:

1. Under date of April 13, 1962, Rule 38 (e) of the Agreement between The Pullman Company and its Conductors was violated when Conductor R. C. Davis, Richmond District, was assigned out of Detroit on April 13, 1962, to deadhead on B&O train 20 to Willard, Ohio, thence in service on B&O Special, Willard to Washington, D. C.

2. Because of this violation we now ask that Conductor Sammons, who was available and willing to perform the service, be credited and paid for a deadhead trip Detroit to Willard; for a service trip Willard to Washington, D. C., and for a deadhead trip Washington back to Detroit, under the applicable rules of the Agreement.

Rules 6, 7, 22, 25 and the Memorandum of Understanding Concerning Compensation For Wage Loss are also involved.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of September 21, 1957, and amendments there to, 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.

Under date of April 13, 1962, extra Conductor R. C. Davis, of the Richmond District, was in the Detroit District. The Pullman Company's representative in Detroit assigned Conductor Davis, who was an extra foreign dis-

Further, we say that every case of this type must be decided from the factual situation developed therein."

(Also see Award 10788 (Mitchell).)

In each of the cases cited above, the Board stated that each case of this type must be settled on its own merits. The Company submits that the facts involved in the case at hand and a reasonable interpretation of the rules, including Rules 6, 7, 22 and 25, require a denial award.

CONCLUSION

In this ex parte statement, the Company has shown that the route on which Richmond Conductor Davis was operated on the assignment in question was a direct route toward the conductor's home station. Also, the Company has shown that awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim that Conductor Sammons should be paid for a deadhead trip Detroit to Willard; for a service trip Willard to Washington, D.C.; and for a deadhead trip Washington back to Detroit under the Memorandum of Understanding Concerning Compensation for Wage Loss 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: Conductor R. C. Davis was regularly assigned to the Richmond District. He arrived in Detroit in extra service on April 13, 1962 and was released from duty at 7:45 A.M. He was given an assignment the same day (6:15 P.M.) to deadhead to Willard, Ohio, on B&O train No. 20 and to perform extra service from Willard to Washington, D. C. on a Special train. His destination trip was to Washington, D. C., which is 113.5 miles from Richmond.

Claimant was a Conductor regularly assigned to the Detroit District. He arrived in Detroit in deadhead service from Ashland, Ohio, on B&O trains 54-384 in the evening of April 13, 1962 and was released from duty on 5:00 P. M. that day.

Petitioner contends that the Company violated Rule 38(e) when it assigned Conductor Davis to perform service to Washington, D. C. and requests that Claimant, who was available and ready to perform the service, be paid for a deadhead trip Detroit to Willard, for a service trip Willard to Washington, D. C., and for a deadhead trip Washington to Detroit.

The pertinent part of Rule 38 provides as follows:

"RULE 38. Operation of Extra Conductors.

(a) All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra con-

ductors of that district when available, except as provided in paragraphs (d) and (e).

* * * * *

“(e) This Rule shall not operate to prohibit the use of a foreign district conductor out of a station in service moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station.

“Q-1. What is the meaning of the word ‘direct’ as used in paragraph (e) of this Rule?

“A-1. ‘Direct’ means a direct rail route between two given points.

“Example 1: A St. Louis District conductor available in Chicago may be used on any railroad having a direct rail route or through Pullman service between these points.

“Example 2: A Chicago District conductor available in San Francisco may be used on any railroad having a direct rail route or through Pullman service between these points.

“Q-2. Shall it be permissible to use a foreign district conductor in service to or from an intermediate point which is on a direct rail route toward his home station?

“A-2. Yes.

“Example 3: A San Francisco District conductor available in Chicago may be used in a Chicago-Los Angeles movement and relieved at Salt Lake City, where either a Los Angeles or a Salt Lake City District conductor would be assigned. Likewise, a Salt Lake City District conductor available in Chicago may be assigned to such a movement as far as Salt Lake City.

“Q-3. Shall a Richmond District conductor available in Jacksonville be used in service via Atlanta, Ga.?

“A-3. No, because Atlanta is not a direct rail route between Jacksonville and Richmond.

“Q-4. Shall a Pennsylvania Terminal District conductor available in Chicago be used in service via Washington?

“A-4. Not on the Pennsylvania Railroad because that is not a direct rail route, but on the B. & O. Railroad because Washington is on a direct rail route.

“Q-5. Shall a Boston District conductor available in Chicago be used in service via New York City?

“A-5. Not on the New York Central Railroad because that is not a direct rail route, but on the Pennsylvania Railroad because New York City is on a direct route.

"Q-6. Shall a Los Angeles District conductor available in New York City be used in service via St. Louis or Chicago?

"A-6. Yes, but not via Memphis or New Orleans."

There is no question that the Company had the right under paragraph (e) of Rule 38 to use Conductor Davis, a foreign district conductor, out of Detroit if he moved "in a direct route toward his home station or to a point within a radius of 50 miles from his home station." The assignment to deadhead to Willard, Ohio, and to perform extra service from Willard to Washington, D. C., was not such a direct route within the meaning of Rule 38. The B&O railroad does not go to Richmond. Willard, Ohio, is not an intermediate point which is on a direct rail route to Richmond. The C&O railroad is a direct rail route from Detroit to Richmond. Davis could have been used on the C&O or on any other railroad to any intermediate point which is on a direct route to Richmond. This was not done. Washington, D. C., is 113.5 miles from Richmond.

The fact that the mileage between Detroit and Washington is less than the mileage between Detroit and Richmond is immaterial. The essential criteria is whether or not Davis was used in service on direct rail route to Richmond or from an intermediate point on such a direct rail route. The record shows that neither of the two prerequisites were met.

Award 5763 (Smith) merely holds that the Carrier was not obliged to use the rail route with the least mileage. Chicago was just as much an intermediate point on a direct rail route as St. Louis. In Award 6009 (Messmore) we held that "when Conductor R. C. Lansberry deadheaded from Denver to San Antonio by way of Dallas, Dallas was an intermediate point on a direct route. Rule 38 (e) does not specify the most direct route, or the shortest direct route." A similar issue was adjudicated in Award 10788 (Mitchell). In that case a foreign district conductor was used in service from Washington, D. C., to Seattle via Indianapolis. The Organization contended that the direct rail route was from Washington, D. C. to Chicago via Pittsburgh then to Seattle. This route would have been 104 miles less than the miles traveled by the foreign district conductor. We properly held that mileage is "no significant deviation from the most direct route." None of the cited Awards are applicable to the facts in the current dispute.

The Company also argues that the first class railroad fare, exclusive of tax, was the same over the C&O Railway and the B&O-RF&P Railroads. This, too, is irrelevant. Rule 38 is not concerned with cost factors.

On the basis of the facts in the record, we are obliged to hold that the Company did not comply with the terms and conditions of Rule 38.

There is no denial in the record that Claimant was available and willing to work the run assigned to foreign district conductor Davis.

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;