

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Nathan Engelstein, 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. M. Nichol, Dallas District, that:

1. Under date of September 21, 1962, The Pullman Company violated the Agreement between The Pullman Company and its Conductors, with especial reference to Rule 38, when it removed Conductor Nichol from his assignment destined to Atlantic City, New Jersey, in Chicago, Illinois.

2. Because of this violation we ask that Conductor Nichol be credited and paid for an extra service trip from Chicago to Atlantic City, and for a deadhead trip, under the applicable rules of the Agreement, from Atlantic City back to Dallas.

Rules 6, 7, 22, 23, and the Memorandum of Understanding Concerning Compensation for Wage Loss are involved.

EMPLOYES' STATEMENT OF FACTS: 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 as though fully set out herein.

I.

During the established signout period in Dallas, on September 19, 1962, the Dallas District assigned extra Conductor C. M. Nichol to an extra service movement via Santa Fe and Pennsylvania Railroads, from Dallas, Texas to Atlantic City, New Jersey.

Conductor Nichol was given an assignment to report at 12:30 P.M., September 20, 1962, to handle five cars in extra service on SFe train 116, occupied by a party of the American Bankers Association. These five Pullman cars operated on SFe train 116 between Dallas and Gainesville, Texas,

man conductor. The record shows that there was a consolidation of cars assigned to Conductor Nichol out of Dallas on September 20 with the cars on the second section of Santa Fe train No. 16 at Gainesville, Texas. Management merely exercised its prerogative under the rule in question to delay the release of Conductor Nichol to a point beyond Gainesville; namely, Chicago.

The Company refers the Third Division to one of its significant awards, Award 7362 (Larkin), wherein it is stated as follows:

"The burden of establishing facts sufficient to require the allowance of a claim (and proper language in the agreement covering the situations), is upon those who seek the allowances."

Further, Third Division denial Award 6828 (Messmore), is pertinent in this case, as may be noted by the following language:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employees arise by reason thereof, this Division is without authority to correct them, as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491."

See Award 9108 (Hornbeck).

CONCLUSION

In this ex parte submission the Company has shown that Rule 28 (b) (2) permits the Company to annul an extra conductor's assignment when the cars in his charge are consolidated with cars of another train or trains that are in charge of a Pullman conductor. Further, the Company has shown that there is no language in Rule 38 that restricts Management in its decision to release an extra conductor at any point beyond the point at which a consolidation occurs. In this case, Conductor Nichol was released at a point, Chicago, where his services were no longer necessary or required. Finally, the Company has shown that awards of the National Railroad Adjustment Board require the Organization to bring forward facts sufficient to support its claim and proper language in the Agreement covering the situation.

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

(Exhibits not reproduced.)

OPINION OF BOARD: These claims grow out of a consolidation of Pullman cars at Gainesville, Texas, and the subsequent removal of Conductor C. M. Nichol at Chicago, Illinois, from his destination, Atlantic City, New Jersey. On September 20, 1962, Mr. Nichol, on extra conductor's assignment, departed from Dallas, Texas, on regular Santa Fe destined for Atlantic City, New Jersey. At Gainesville, Texas, the five cars in the section were joined with eight Pullman cars under service of Conductor C. R. Condit. Mr. Nichol's assignment was cancelled at Chicago on September 21, 1962. Claim is filed by Conductor Nichol for compensation for the trip from Chicago to Atlantic City plus deadhead service to Dallas, Texas, on the grounds

that Carrier dismissed him at Chicago, rather than the point of consolidation and thus violated Rule 38 (b), Point 2, of the Agreement, which provides:

“ * * * * *

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

* * * * *

(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.”

Carrier takes the position that there is no provision in the Rule requiring it to release an extra conductor at a point where the cars are consolidated. It asserts, that, “it is left strictly up to the discretion of management as to when it is necessary for two conductors to take care of the service on any train.” According to this principle, it decided that two conductors were not required between Chicago and Atlantic City.

Rule 38 is pertinent to this dispute because it sets forth the conditions under which an extra conductor's assignment may be annulled. It is apparent to us that the point where his services can be dispensed with is at the place of consolidation, for this is the point which is crucial in determining whether or not management can dispense with the services of one of its conductors. After exercising its judgment, management has a responsibility to dismiss the conductor not needed or to keep him for his original assigned destination. To interpret this Rule otherwise is to make meaningless the consolidation situation which establishes the reason for keeping or dismissing a conductor.

It is apparent to us that at Gainesville the Carrier determined that it had a need for Conductor Nichol; and, therefore, he should have been continued to Atlantic City, New Jersey. The fact that he was maintained for a distance of 900 miles after the consolidation point demonstrates the continued need for his services. Since no further changes or consolidations modified the situation that took place at Gainesville, there is no reason why Carrier should have annulled his assignment at Chicago.

We hold that Carrier violated the Agreement of the parties. Claimant, having already been paid for a service trip Dallas to Chicago and a deadhead trip Chicago to Dallas, shall now be entitled to a service trip Chicago to Atlantic City and a deadhead trip Atlantic City to Chicago.

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 of the parties was violated.

AWARD

Claim sustained in accordance with Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1964.