

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 Philadelphia District Conductor S. J. Weiss that the Agreement between The Pullman Company and its Conductors was violated, with especial reference to Rules 40 and 38, when:

1. On October 12, 1962, Conductor Weiss was furloughed, and was not given the assignment on a regular run on PRR trains 130-29 and 4, Philadelphia-New York-Altoona-Philadelphia. For accounting purposes, this run is designated as Line 6585.

2. Because of this violation, we now ask that Conductor Weiss be credited and paid under the applicable rules of the Agreement for 2 days and 15 minutes, the time he would have earned had he been properly assigned.

Rules 39, 6, 21, and the Memorandum of Understanding Concerning Compensation for Wage Loss are also involved.

EMPLOYEES' 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 the same as though each rule is fully set out herein.

I.

According to the record, an Operation of Conductors Form(93.126) shows that on October 11, 1962, there were two regular runs assigned to the Philadelphia District. The run on PRR trains 130-29 and 4, operating between Philadelphia-New York City-Altoona, Pa.-Philadelphia required two regularly-assigned conductors. This run, for accounting purposes, was designated as Line 6585. The other run was created by special agreement as a station duty assignment in Harrisburg, Pa., requiring one conductor, who received a relief of 96 hours after 26 days of service. Thus, the two runs required three regularly-assigned conductors.

OPINION OF BOARD: This claim arose because Conductor S. J. Weiss was placed on furlough while Extra Conductor W. J. Remy, his junior, was in service and, as a result of this furlough, was not given an assignment on a regular run.

The following incidents led up to the claim: on October 11, 1962 at 9:00 A. M. Mr. Weiss was called for an extra assignment in road service. Another conductor's position was also available for station duty. When Mr. Weiss received the 9:00 A. M. call, he advised the sign-out clerk that he would be available only for a station duty assignment. During the sign-out period at 11:00 A. M., the sign-out clerk telephoned Mr. Weiss again; and he was informed by the person answering the phone that Mr. Weiss was not available for duty because he was out of town. Conductor Remy was then given the road service assignment, and Conductor J. P. Johnson was assigned the station duty. The following day, October 12, 1962, Conductor Weiss was returned to furlough status and was assessed three hours for missing a call. Since Mr. Weiss was considered on furlough, two other conductors, W. P. Johnson and R. L. Ferguson, were given the two assignments available on October 12, 1962.

Petitioner Weiss takes the position that under Rule 40 of the Agreement he could not be placed on furlough until the return of Mr. Remy, his junior. He argues that under Rule 38, since he was not on furlough and had only 30:30 assessed hours, he was entitled to the assignment before Mr. Johnson, who had 39:10 hours. He requests that he be credited and paid for two days and 15 minutes, the time he would have earned had he been assigned as he alleges was his right.

Carrier denies the claim on the basis that Conductor Weiss was rightfully placed on furlough on October 12, since he was out of town and missed his assignment. Moreover, Carrier points out that Mr. Weiss indicated in his conversation with the sign-out clerk at 9:00 A. M. on October 11 that he did not desire road work; yet he makes claim for the road work assignment of October 12. Carrier also emphasizes that the method of recalling and furloughing its employees is a company practice which resulted from the issuance of Interpretation of Special Board of Adjustment Award No. 199 on June 17, 1958.

We find that Rule 40 is pertinent to this dispute. Apparently there was some basis on which Carrier selected Mr. Weiss for the assignment on October 11, 1962. It appears to us that he was called on a seniority basis in accordance with Rule 40. Similarly he should have been furloughed on the same seniority basis. Since Mr. Remy, his junior, was not furloughed, it follows Mr. Weiss should not have been furloughed.

Carrier regards occasional runs made available to furloughed conductors, as in the instant case, as a special situation which is governed by the Interpretation of Special Board No. 199 rather than a case to which the normal recall and furlough provision under Rule 40 are applicable. This arrangement under the Interpretation, it maintains, was adopted because the rules of the Agreement were not written in contemplation of such special conditions. It further submits that the recall of furloughed Conductor Weiss was consistent with the companywide practice under the Interpretation. In searching the record we found that the issue which led to the drawing up of the Interpretation was not related to Rule 40. We further failed to find evidence of the companywide practice that employees are automatically refurloughed immediately upon completion of the work for which they were recalled. In the absence of proof supporting Carrier's claim, we hold that Rule 40 and not the Interpretation is applicable.

Since we have established that Conductor Weiss was not on furlough on October 12, we next consider the question of his eligibility and availability for the assignment. Under Rule 38(c) Mr. Weiss had priority for the road service assignment over Mr. Johnson, since he had 30:30 hours as compared with Mr. Johnson's 39:10 hours. In determining whether he was available for the work, we find that Carrier relies on the information received on October 11 and assumes because he was not willing to take that assignment on October 11 he was not available on October 12. No effort was made by the sign-out clerk to communicate with Conductor Weiss on October 12. Carrier had a responsibility to make known to him the position available prior to the sign-out period on October 12. The preference expressed by Mr. Weiss for station service is only suggestive and not mandatory. Mr. Weiss was entitled to the opportunity of that assignment.

We hold that Carrier violated the Agreement of the parties and, therefore, sustain the claim of Conductor Weiss.

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.

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.