

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**THE 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 J. B. Moore, Salt Lake City Agency, that Rule 38 of the Agreement between The Pullman Company and its Conductors was violated when:

1. Under date of July 22, 1962, The Pullman Company failed to assign Conductor Moore to a Main train, identified as 1070-R, from Salt Lake City, Utah, to Fort Lewis, Washington.

2. Because of this violation we now ask that Conductor Moore be credited and paid for an extra service trip, which was denied him, from Salt Lake City to Fort Lewis, and for a deadhead trip from Fort Lewis back to Salt Lake City.

The Memorandum of Understanding Concerning Compensation for Wage Loss is also 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 the same as though fully set out herein.

I.

On July 20, 1962, an assignment in extra service arose at the Nellis Air Force Base, Nevada, to Fort Lewis, Washington, via Salt Lake City, Utah.

The Nellis Air Force Base is an outlying point under the jurisdiction of the Los Angeles District.

Question and Answer 2 to Rule 64 define an outlying point as a point at which no conductors are carried on the seniority roster.

Rule 66, captioned The Jurisdiction of Districts and Agencies, reads as follows:

"If no extra conductor of the district is available, as in the instant case, this language does not restrict the use of foreign district conductors. Thus paragraph (e) was not controlling in the assignment of Conductor Talley on the date in question.

In short, Rule 38 deals specifically with the 'operation of extra conductors.' Here no extra conductors were available and none was involved. We fail to see that there was any violation of the Agreement (Award 6093)."

Thus, the fact becomes obvious that Awards 6093 and 7406 confirm the correctness of assigning foreign district conductors to service in the absence of available local extra conductors under Rule 38 to the destination of two or more cars handled by them. During the course of the appeal on the property the Organization referred to Awards 6617 and 8685, which are sustaining awards of the Third Division. Inasmuch as the facts in these cases plainly distinguish them from the instant case, it is unnecessary to consider them in any way applicable.

Examination of the facts of Award 8685 establishes that no effort was made to ascertain the availability of local furloughed conductors, which fact renders the award inapplicable in the instant case. Additionally, the incidents upon which Awards 6617 and 8685 are based arose prior to the date of the Ferguson Interpretation, June 17, 1958.

CONCLUSION

In this submission the Company has shown that Rule 38 (a) is the controlling provision in this dispute and that the provisions of paragraph (e) are not applicable to the facts of this case. Also, the Company has shown that the procedure in Los Angeles on July 20, 1962, was in precise conformity with the Interpretation of Rules 25 (c) and 38 (e) as contained in the Award of Special Board of Adjustment No. 199 (Ferguson), which Interpretation was rendered under date of June 17, 1958, in that Los Angeles attempted to make local furloughed conductors available for assignment to the military Main in question. Also, the Company has cited Awards 6093 and 7406 as supporting Management's position that extra Conductor Jones, Salt Lake City Agency, was entitled to the assignment to the military Main, which assignment carried him through his home station to Fort Lewis, Washington, and thence deadhead to Portland, Oregon. The Organization's contention that Conductor Jones' assignment should have been terminated at Salt Lake City and that extra Conductor Moore should have been assigned to service Salt Lake City-Fort Lewis and to a deadhead trip Fort Lewis-Salt Lake City is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The following facts are considered relevant to a proper understanding of this claim. On July 20, 1962, there were no extra or furloughed conductors of the Los Angeles District to fill an assignment from Nellis Air Force Base to Fort Lewis, Washington, via Salt Lake City, Utah. Extra Conductor Jones of the Salt Lake City District was available in Los Angeles and was given the assignment. Claimant Conductor Moore, of the Salt Lake City Agency, was available for service from Salt Lake City to Fort Lewis on July 22, 1962, but was not given that part of the assignment.

Petitioner contends the failure to assign Claimant to the Salt Lake City-Fort Lewis segment of the trip was a violation of Rule 38, entitled "Operation of Extra Conductors". More specifically, Petitioner asserts that paragraph (e) of the rule, question and answer 2 and example 3 thereunder, were violated when Conductor Jones was permitted to operate beyond his home station, thus depriving Claimant of the trip from Salt Lake City to Fort Lewis.

The Company's position is that inasmuch as there were no extra or furloughed conductors of the Los Angeles District available for the service trip at Los Angeles, paragraph (e) of Rule 38 was not applicable to the facts, and that, therefore, there was no contract bar to its use of a foreign district conductor to any point or place.

The sole issue here is, therefore, whether a foreign district conductor available for service at an away-from-home terminal where no extra or furloughed conductors of the district are available, may properly be assigned to service operating through his home terminal to the final destination of the assignment.

The Board finds that to do so is no violation of the Agreement in evidence here.

Rule 38 governs the use of extra conductors under varying factual situations and circumstances. Paragraphs (a) and (e) read 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 conductors 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.

* * * * *

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."

Petitioner errs when it concludes that paragraph (e) of the rule applies under the facts of this case. It is not, as Petitioner argues, a special rule taking precedence over the general rule expressed in paragraph (a). It is one of two exceptions to that rule and must be read not as inapposite to but in conjunction with paragraph (a). The language of paragraph (a) clearly requires the assignment of all the extra work of a district to the extra conductors of that district when they are available with two express exceptions only, one of which (paragraph (e)) permits the assignment of such work to a foreign district conductor only when the service assigned moves "in a direct route" toward his home station or to a point within 50 miles of it. Thus, even if extra conductors are available in the district, a foreign district conductor may be assigned extra service under paragraph (a), only when the conditions of paragraph (e) are met. The language of paragraph (e) constitutes a permissive exception to the general rule that all extra work will be assigned to extra available conductors of the district as expressed in paragraph (a). (Cf. Award 7406 and 6093).

Here no extra or furloughed conductors were available at Los Angeles to take the assignment. Hence, Rule 38(a) obviously does not apply and it follows that any exceptions thereto, including paragraph (c) of the rule, are also inapplicable. Something cannot be excepted from nothing. Accordingly, unless other provisions of the Agreement bar the Carrier from doing so (and we find none), it was free to man the service with a foreign district conductor.

Petitioner cites and relies on the precedential authority of sustaining Awards 6375, 6617, 6649 and 8685. Carrier urges the Board to follow denial Awards 3918, 3973, 5588, 6093 and 7406; also, an interpretation of Rules 25(c) and 38(e) of the Agreement by S.B.A. No. 199. All involve these same parties and the Agreement rules in evidence here.

The Board, having examined these Awards with care, is not unaware of the conflict they express. We do not propose, however, to engage in an extensive discussion of the distinguishing features of each. It suffices to say that, in our opinion, the Awards cited by the Carrier represent a sound and proper interpretation and application of Rule 38, entirely in consonance with the findings of the Board in the instant case.

Having so found, and in accordance with our interpretation of the rules as set forth herein, the Board will deny this claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.

DISSENT TO AWARD NO. 12463, DOCKET PC-13983

The award of the majority herein is in error for the reason that it is based upon the erroneous holding that Rule 38(a) does not apply; therefore, the exceptions, specifically paragraph (e) are inapplicable.

Rule 38 deals specifically with the operation of extra conductors, whether they are local extra or foreign extra conductors. Paragraph (e) of Rule 38 permits the assignment of a foreign district conductor to a movement in a direct route to his home station even though there are local extra conductors available. The fact that no local extra conductors were available does not nullify the entire Rule, inasmuch as Paragraph (a) specifically provides that a conductor "when available, shall be assigned, etc. . . . except as provided in Paragraph (e)."

In Award 9844 we said and held:

"In construing the Agreement it is, of course, elementary that we look to all four corners thereof and give effect to all of its provisions, so as to preserve and not destroy any particular section thereof. Award 6567 (Wyckoff), Award 6723 (Donaldson), Award 8380 (Vokoun)."

In Awards 6617 and 8685 the Carrier advanced the same contention as that herein, but its contention was overruled.

In Award 6617, under facts similar to the instant case, in sustaining that claim, we held:

"In applying the facts to the rule and example 2 under paragraph (e) thereof we are of the opinion that the emergency situation existing when the original assignment of Conductor Davis was made at Barstow ceased to exist beyond Clovis and the assignment rightfully belonged to the Fort Worth District and Claimant under this interpretation was entitled thereto. Under the provisions of Rule 38 where there is an assignment of a Conductor in a foreign district, it does not permit the routing of such Conductor through his home terminal district under facts as here presented."

Award 8685, a dispute also directly in point, the Carrier stated, as in the instant case:

"Therefore, we can only conclude that since paragraph (a) of Rule 38 was not applicable to the situation, paragraph (e), which is an exception to (a), likewise could not be applicable. . . ."

In that case the majority in sustaining the employees said and held:

"We must, therefore, consider Rule 38 as a whole. It is very long, contains many sections, paragraphs and examples. It does deal with 'Operation of Extra Conductors.'

If Rule 38(e) conferred upon the Company the affirmative right to 'the use of a foreign district conductor' in the manner therein described, then, we could agree with the Company that in the absence of extra conductors, paragraph (a) would not apply, and consequently paragraph (e) — which modifies (a) — would have no application.

Paragraph (e), however, does not confer such a right directly upon the Company. It does say that nothing in the entirety of the Rule itself shall

'... 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.'

It is, therefore, inescapable that Company has the right to the use of a foreign conductor in the manner described, and paragraph (e) protects that right by stating that no paragraph of the Rule governing 'operation of extra conductors' shall 'operate to prohibit' such use of foreign district conductors, so long as Company uses such conductor in a direct route to his home station or within a radius of 50 miles thereof."

Awards 6093 and 7406, relied upon by the majority, are inapposite. Award 6093 involved the Carrier's right to change an Extra Conductor's assignment when the destination of his train is changed en route.

Award 7406 involved facts not here present. In that case the Conductor was given an assignment in extra road service through a point within 50 miles of his home station.

The instant case does not involve a situation in which the foreign district conductor was assigned in a direction away from his home station; therefore, under Carrier's own operating rules, under the heading "Assignment of Extra Foreign District Conductors", which was cited to the majority, and reading in part as follows:

"In the event the service is in a direct route to the conductor's home district and the terminal point is not within a 50 miles radius, the conductor may be assigned to an intermediate station and the intermediate station wired with request to have the conductor relieved at that station. . . ."

is conclusive evidence that the employees' position is the correct one, as interpreted in Awards 6617, 6649 and 8685.

In Award 12463 the majority, composed of the Referee and the Carrier members, have written an exception to Rule 38 for the benefit of the Carrier, something they are not authorized to do; therefore, I dissent.

H. C. Kohler,
Labor Member.