

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

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**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 W. L. Spencer, Washington District, that The Pullman Company violated Rules 61 and 38 when:

1. Under date of May 23, 1961, the Company left unfilled (blanked) a conductor's regular assignment on Sou A&WP-L&N Train 37, designated for accounting purposes as Line 6864, between Washington, D. C. and Charlotte, N. C.

2. Because of this violation we now ask that Conductor Spencer be credited and paid under the provisions of Rules 6 and 21 for a service trip Washington to New Orleans, La., and for a deadhead trip New Orleans back to Washington, under the terms of Rules 7 and 22.

**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 May 23, 1961, there was a regularly-assigned conductor run between Penn Terminal, N.Y., and New Orleans, La., outbound, on PRR train 149 and Sou-A&WP-L&N train 37 and, inbound, on L&N trains 98-38 A&WP Sou. 38-PRR 118. For accounting purposes, this run is designated as Line 6864. Eight Penn Terminal District Conductors are regularly assigned to this run.

Also, on May 23, 1961, there was a regular conductor run between Washington, D. C. and Charlotte, N. C. on Sou. Trains 37 and 38. For accounting purposes, this run was designated as Line 6875. Two conductors are regularly assigned, with reliefs of 24 hours after the 2nd, 3rd, and 4th round trips, thus placing the run in the category of 2½ men. In other words, there are 2 regularly-assigned conductor runs on Sou. Train 37 between Washington and Charlotte.

by Rules 38 and 61 of the Agreement as alleged by it. The Company has shown that the emergency work in question arose from a derailment in the Philadelphia District and that Line 6864 operated without a conductor between Philadelphia and Washington, which fact removed the service from the jurisdiction of the Washington District and the right of Washington District conductors to perform it. Further, the Company has shown that the claim as presented to the Third Division is a modification of the claim handled on the property, which fact makes the claim before the Board an improper one. Finally, the Company has shown that Awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim is without merit and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On May 23, 1961, Conductor Moran departed New York on his regular assignment on PRR train 149 which later was involved in a derailment about one mile south of Philadelphia. The three rear Pullman cars were left at the scene of the accident, as were Conductor Moran, the train crew and the passengers in those cars. The head-end of the train including three Pullman cars proceeded into Washington, D.C. arriving at 6:41 P.M. There the three head cars and passengers were transferred to Southern Train No. 37 which departed at 7:01 P.M. in charge of a Washington District conductor regularly assigned to Train 37 between Washington and Charlotte, N.C. The Washington District office notified the Atlanta District to have the Asheville, N.C. Agency assign a conductor at Charlotte to protect the cars to New Orleans, La. This was done.

Conductor Moran and passengers later arrived Washington on PRR Train 113. They were transferred to Southern train 47 which departed Washington in charge of an Atlanta District conductor. Conductor Moran also operated through to New Orleans and reported for his return trip to New York as scheduled on May 25, 1961.

Claimant was an extra conductor of the Washington District available for service there on May 21.

Petitioner alleges that Conductor Moran's regular assignment was blanked out of Washington and that Claimant should have been used on the service trip Washington to New Orleans and then deadheaded back to Washington with credit allowed him for held-for-service time in New Orleans. It cites and relies on Rule 61 of the Agreement which says, in part:

"A run covered by an Operation of Conductors Form (Form 93.126) shall remain in effect until cancelled by bulletin."

as well as certain Awards of this Division asserted to be in point and controlling (7009, 9991, 6748, 9544).

The Company has raised a procedural defense which must be dealt with before proceeding to the merits of the claim. It has shown that the original claim progressed on the property was for compensation based on the service trip Washington, D.C. to New Orleans La., and a deadhead trip to New York, N.Y., rather than to Washington, D.C. In our opinion, this is not a fatal variance. As the Board said in Award 3256:

“ . . . The fact that the reparations asked for because of the alleged violation may have been amended from time to time, *does not* result in a change in the identity of the subject of the claim. The relief demanded is ordinarily treated as no part of the claim and consequently may be amended from time to time without bringing about a variance that would deprive this Board of authority to hear and determine it. No prejudice to the Carrier appears to have resulted in the present case and the claim or variance is without merit.”

The same is true here and the objection is overruled.

On the substantive merits of the claim, the record shows that a part of Conductor Moran's regular assignment consisting of the three Pullman cars at the head end of PRR 149 was blanked when it left the scene of the accident and proceeded to Washington, D.C., without a conductor. It is true, as the Company asserts, the right to this segment of the trip belonged to extra conductors of the Philadelphia Agency because the incident giving rise to the need for an extra conductor occurred within their home district, thus Rule 38(a) was applicable and controlling. The fact that no claim was filed by a Philadelphia conductor or that the Company was unaware of the absence of the regularly assigned conductor (Moran) on the trip into Washington, is of no consequence insofar as Claimant's contractual rights are concerned. His right to the service was inchoate until the blanked part of the regular assignment reached Washington, at which time it ripened into a vested right. Thereafter, under Rule 38(a), he should have been used to handle that segment of the unfilled regular assignment which was a part of train 37 when it left Washington for New Orleans. (cf. Award 6748)

Each of the regular assignments of the two conductors operating on Train 37 out of Washington was the subject of a bulletined assignment and award under Rule 31 of the Agreement. Each is separate and distinct one from the other. Rule 61 provides that such regular assignments shall remain in effect until cancelled by bulletin. Neither was so cancelled in this dispute. A portion of Conductor Moran's regular assignment was, however, blanked. Only one conductor at Washington was used to cover these two separate regular assignments in violation of Rule 36, reading in pertinent part, as follows:

“A Conductor operating in regular assignment shall not be used in service outside his assignment except in emergency . . .”

All or a part of a regular assignment may not be blanked except in an emergency. There was no emergency at Washington and certainly there was no cancellation of the assignment by bulletin.

Claimant was available and ready to perform the extra work of filling the blanked portion of Conductor Moran's regular assignment out of Washington. Failure to use him was a violation of the Agreement.

**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 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 30th day of April 1964.