

Award No. 13241

Docket No. PC-14728

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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 T. J. Gallivan, St. Louis District, that the rules of the Agreement between The Pullman Company and its Conductors were violated when:

1. On February 27, 1962, two cars, for accounting purposes designated as Line 6614-6527, were operated out of St. Louis, Mo. on PRR train 32 without the services of a Pullman conductor in charge, violating Rules 25 and 64.

2. Because of this violation, we now ask that Conductor Gallivan be credited and paid, under the provisions of Rules 6 and 21, for a service trip St. Louis to New York, and a deadhead trip New York to St. Louis, under the provisions 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.

Under date of February 27, 1962, two Pullman cars, operating in regular line service on PRR train 32, departed from St. Louis, Mo. without the services of a Pullman conductor.

The conductor run on PRR trains 31 and 32 is covered by an Operation of Conductors Form. This form (93.126) is issued in compliance with Rule 15 of the Agreement. For accounting purposes, this conductor run is designated as Line 6527.

Five Penn. Terminal District conductors are assigned to the conductor run on PRR trains 31 and 32. The conductor reports in New York the first day at 3:30 P. M. and is released in St. Louis the second day at 12:40 P. M., with an established layover in St. Louis of 6:10 hours. For the return trip on train 32 the conductor reports in St. Louis the second day (the same day of arrival) at 6:50 P. M., receives passengers at 7:05 P. M., departs at 7:35 P. M., and is released in New York on the third morning at 6:30 A. M.

possible under the circumstances in this case and we therefore necessarily find no violation of the agreement. (see Award Number 10723—Moore, and Award Number 3918—Douglas, between these same parties)”

The record in this dispute plainly supports the conclusion that every reasonable effort was made to assign a Pullman conductor to train #32 out of St. Louis on February 27, 1964.

CONCLUSION

The Company has shown in this submission that Rules 25 and 64 were not violated, as alleged by the Organization in its claim to the Board. Also the Company has shown that Night Agent Harris was unable to make a conductor available for the assignment in question, as the term available is defined in Q. and A. 9 of Rule 38 of the Agreement. Further, the Company has shown that the claim in behalf of St. Louis extra Conductor Gallivan is excessive and results in a pyramiding of costs against the Company. Finally, the Company has shown that the awards of the Third Division support Management in this dispute and that the principle in this case is foursquare with the principle found in the awards cited.

The claim is without merit in all respects, and it should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The parties are in agreement that on February 27, 1962, PRR Train No. 32 departed from St. Louis, Missouri, carrying two regular sleeping cars without the services of a Pullman Conductor. Petitioner contends that: (1) this violated Rule 64 (a) of the Agreement; (2) a St. Louis District Extra Conductor should have been assigned; and (3) Claimant was qualified and available. Carrier contends that no Conductor was available; and, specifically, Claimant was not “available” within the meaning of that word as set forth in Question and Answer 9 in Rule 38 of the Agreement. Further, Carrier contends, in effect, that it is absolved from compliance with Rule 64 (a) when no Conductor is available.

PERTINENT RULES

The following Rules are pertinent:

“RULE 64. Conductor and Optional Operations. (a) Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, in service,”

“OPERATION OF EXTRA CONDUCTORS

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,

* * * * *

Q-9. What is meant by ‘available’ as used in paragraph (a) of this Rule?

A-9. 'Available' means that the conductor entitled to an assignment can be contacted and assigned and can reach the point where he is required to report by scheduled reporting time."

THE MATERIAL FACTS

There was in St. Louis, on February 27, a Pennsylvania Terminal District Conductor, properly assigned to Train No. 32. He was scheduled to report at 6:50 P. M. The train was scheduled to depart at 7:35 P. M. At 6:55 P. M. it became known to Night Agent Harris that the assigned Conductor had not reported. Harris failed in his efforts to locate the assigned Conductor. It being his opinion that no St. Louis District Extra Conductor could report to protect Train No. 32 in less than an hour, he sought to locate an in town Pennsylvania Terminal District Conductor. When he failed he told the Train Conductor to release the train and depart without a Pullman Conductor.

At the hearing it was developed that Claimant lived 119 blocks from Union Station. Petitioner's Local Chairman testified that Claimant had told him he could "make the Union Station in an emergency in twenty minutes;" further, in his opinion Claimant could have protected the assignment had Night Agent Harris communicated with Claimant, without delay, after the failure of the assigned Conductor to report on time became known to Harris.

BURDEN OF PROOF

Petitioner bears the burden to prove that: (1) Carrier violated Rule 64 (a) of the Agreement; and (2) Claimant was "available" within the meaning of that word in Rule 38 (a).

RULE 64 (a)

This Board has no equity powers. Our jurisdiction is limited to interpreting and applying agreements according to the law of contracts.

It is a principle of contract law that when a party binds itself absolutely, without exception for foreseeable contingencies, the occurrence of such a contingency does not release the party from its contractual obligation. The principle is applicable in this case.

In Rule 64 (a) Carrier has bound itself, unequivocally, not to operate a train "while carrying, at the same time, more than one Pullman car . . ." without a Pullman Conductor. This Carrier admits it did. Consequently, since we are foreclosed from giving weight to the arguments of Carrier founded in equity, we find that Carrier violated Rule 64 (a) of the Agreement.

AVAILABILITY OF CLAIMANT

Having found that Carrier violated Rule 64 (a) of the Agreement, we face the issue, within the framework of Rule 38 (a), as to whether Claimant could have been contacted and assigned and could have reached the Union Station in St. Louis by scheduled reporting time. We assume, in absence of an issue, that in all other respects Claimant qualified for the assignment pursuant to Rule 25 of the Agreement.

For the purposes of this case we find it unnecessary to pass upon whether there is a distinction between "scheduled reporting time" and scheduled train departure.

The evidence as to Claimant's availability is meager. In the opinion of Night Agent Harris, Claimant could not report before scheduled train departure. In the opinion of Petitioner's Local Chairman, to at least some extent founded on hearsay, Claimant could have reported before scheduled departure time. There is no factual evidence of probative value as to the time it would have taken Claimant from his home, after notification, to report aboard Train No. 32. Of the opinion evidence, neither version preponderates. Consequently, Petitioner has failed to satisfy its burden of proof that Claimant was "available." We will, therefore, deny paragraph 2 of the Claim.

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 Carrier violated Rule 64 of the Agreement.

That Carrier did not violate Rule 25 of the Agreement inasmuch as Claimant's right to the assignment was subject to his being "available" as prescribed in Rule 38 (a).

AWARD

1. The allegation in paragraph 1 of the Claim that Carrier violated Rule 64 of the Agreement is sustained.

2. The allegation in paragraph 1 of the Claim that Carrier violated Rule 25 of the Agreement is denied.

3. Paragraph 2 of the Claim is denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 29th day of January 1965.