

Award No. 14017
Docket No. PC-15140

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, 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 E. P. Kesler, Norfolk Agency, that The Pullman Company violated the rules of the Agreement between the Pullman Company and its Conductors, effective September 21, 1957, with especial reference to Rules 25 and 38 when, on September 19, 1963, it failed to assign Conductor Kesler to report in Norfolk at 9:20 P. M. to fill the relief (10 days) in the conductor run on Sou Trains 13 and 16, for accounting purposes designated as Line 6854.

Because of this violation, we now ask that Conductor Kesler be paid for a deadhead trip Norfolk to Raleigh, under applicable rules, of not less than a minimum day, and for ten (10) round trips (1½ days for each round trip, or 15 days), in the conductor run on Sou Trains 13 and 16 between Raleigh and Greensboro and, upon completion of the 10 round trips, for a deadhead trip Raleigh back to Norfolk under applicable rules, of not less than a minimum day, or for a total of 17 days' pay.

Rules 6, 21, 7 and 22, and Question and Answer to Rule 18, 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 fully set out herein.

I.

During the established signout period from 10:00 A. M. to 10:30 A. M., September 19, 1963, there existed in the Norfolk Agency 3 conductor requirements to be filled in accordance with Rule 38(c), in the following time order:

1. The relief in the conductor run on SAL Trains 17 and 18, for accounting purposes designated as Line 6252, with a reporting time in Norfolk of 4:30 P. M., September 19.

ously is not pertinent to this dispute which is concerned with the right of the Company to utilize the services of a regular conductor when an emergency exists.

An examination of the record in this dispute relates directly to the conclusion that the Organization has neither rule support from the controlling Agreement, nor support from the Awards of the Third Division. Undoubtedly, the burden is upon the Organization in a claim of this kind. Numerous awards of the National Railroad Adjustment Board have so held. A cornerstone award on this principle is Third Division Award 7362 (Larkin), 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. . . ."

Another such award is Third Division Award 9633 (Johnson), wherein it is stated as follows:

"The burden of proving the claim admittedly rests upon the Claimants. Upon the record we must conclude that no violation of the Agreement has been shown."

CONCLUSION

In this submission, the Company has shown that there is no rule in the Agreement that provides the manner in which a regular conductor shall be used to perform emergency work. Also, the Company has shown that Rule 38 relates to the operation of extra conductors with the exception that Rule 38 (d) permits Management to use a regular conductor out of the regular order of his assignment in a special service movement requested by the President of the United States, a condition not found in this dispute. Further, the Company has shown that Rule 36 permits the use of a regularly assigned conductor in an emergency, but does not set forth any formula as to the manner in which such regular conductors shall be used. Finally, the Company has shown that Rules 25, 6, 21, 7, 22 and Question and Answer to Rule 18 have not been violated by the Company.

Inasmuch as it has been shown that no rule of the Agreement has been violated in the manner in which the relief in Line 6854 was handled in September, 1963, the Company submits that the claim in behalf of Conductor Kesler is without merit, and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner's theory is that Carrier violated Rule 38 of the Agreement when it failed to assign the Claimant, a regular conductor, to fill a relief assignment on Southern Trains 13 and 16 between Raleigh and Greensboro.

At the time in question there were three relief assignments to be filled. Two were filled by extra conductors in accordance with Rule 38(c). Carrier used Saxon, a regularly assigned conductor, on the third.

It is undisputed that no extra conductor was available for the third assignment and that, under the circumstances, Carrier was free under Rule 36 to assign a regular conductor to the relief work. It is equally clear that had an extra conductor been available, the normal procedure under Rule 38(a) and (c) would have been for the Norfolk Agency to assign an extra conduc-

tor to the vacancy and he would report for the deadhead trip from Norfolk to Raleigh on the evening of September 19 so that he could perform the service from Raleigh to Greensboro on September 20 and thereafter between those two points for the balance of the 10 day relief period.

Petitioner contends that that same procedure, prescribed by Rule 38(a) and (c), should have been followed in the instant case. It points out that Claimant, a regular conductor, was available on September 19 in Norfolk and should have been called upon for the relief work. Carrier maintains that Saxon, regularly assigned to the trains involved in this dispute, had completed his 20 round trips, was in Raleigh and was simply used for one more trip on September 20 from Raleigh to Greensboro and then relieved by an extra conductor for the balance of the 10 days' relief assignment.

The Board is satisfied from its examination of the Agreement that, under the circumstances of the present case, no rule covers the sign-out procedure and priority of assignments for regular conductors. Rule 38 is emphasized by Petitioner, but clearly applies only to extra conductors; both the title of that Rule, "Operation of Extra Conductors", and the language that appears in its sub-paragraphs dispel any doubt regarding that interpretation. Regular Conductors are not transformed into extra conductors when used in relief assignments.

Rule 25 is a seniority rule, and is not relevant, since the disputed service was performed by Norfolk District conductors. Neither that rule nor any other provision of the Agreement prescribes which regularly assigned Conductor within the same seniority district must be assigned to perform relief work in an emergency. In view of that fact, and since this Board lacks authority to supplement or fill in gaps in an agreement, the claim must be denied.

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 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 10th day of December 1965.