

Award No. 14756
Docket No. PC-15347

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, 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. L. Hellmers, New Orleans District, that under date of June 28, 1964, the Agreement between the Pullman Company and its Conductors was violated, with especial reference to Rules 25 and 64, when:

1. SP Train 1-3 operated out of El Paso, Texas, without the services of a Pullman conductor.

No El Paso Conductor was available.

2. Because of this violation, we now ask that Conductor E. L. Hellmers be credited and paid under the terms of Rules 6 and 21 of the Agreement for a service trip El Paso to Los Angeles, and for a dead-head trip Los Angeles back to El Paso, 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, revised January 1, 1964, 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.

Prior to April 22, 1964, New Orleans District conductors were assigned to the conductor run on SP Trains 1 and 2 between New Orleans and Los Angeles. This run, for accounting purposes, is designated as Line 3549. There are 12 New Orleans District conductors assigned to the run. Each of the regularly-assigned conductors received a 24-hour relief at the home terminal after performing two round trips, thus placing the run in the category of a 12½-man assignment.

Effective April 22, 1964, the New Orleans District conductor run on SP Trains 1 and 2 between New Orleans and Los Angeles was shortened to operate between New Orleans and El Paso, Texas.

stated that inasmuch as further appeal of the claim was barred under the procedure for handling claims as set forth in Rule 51, the General Chairman's appeal of September 21, 1964, was improperly before him and he was therefore closing his file on the case. A copy of the Appeals Officer's letter dated November 12, 1964, is attached as Exhibit G.

General Chairman Wise wrote the Company's Appeals Officer under date of November 18, 1964 in which he stated that "By no stretch of the imagination can it be held that Conductor Hellmers' letter to Superintendent O'Neill, under date of July 2, was a claim." He stated further that the Appeals Officer's decision of November 12, 1964, was unsatisfactory. Copy of General Chairman Wise's letter of November 18, 1964, is attached as Exhibit H.

The Organization progressed the dispute on appeal to the Third Division, National Railroad Adjustment Board, in letter dated February 18, 1965, which is attached as Exhibit J.

(Exhibits not Reproduced.)

OPINION OF BOARD: At the outset this case poses a procedural issue. The Company contends that the claim is barred because the Organization failed to comply with the 30-day time limit in the third paragraph of Rule 51:

"* * * If the decision of the district representative is not satisfactory, the conductor involved or his representative shall have the right of appeal. Notice of appeal shall be given to the district representative within 30 days of his decision or further appeal shall be barred."

The Organization, on the other hand, contends that the claim should be sustained since a hearing was not granted in accordance with Rule 51.

The sequence of events was as follows:

June 28. SP Train 1, operated out of El Paso without a conductor although Conductor Hellmers was available.

June 28 or 29. Facts concerning June 28 incident communicated by Mr. Hellmers to O.R.C. General Chairman Wise.

June 30. General Chairman Wise suggested, in a letter to Mr. Hellmers, that, if no El Paso Conductor could have been made available, a claim be filed on behalf of the New Orleans conductor who took #1 into El Paso, alleging violation of Rules 25 and 64.

July 2. Conductor Hellmers turned in his time sheet, which included the time for the El Paso - Los Angeles trip (and deadhead return) he did not make. (The record does not contain a copy of this time sheet.) On the same day Mr. Hellmers wrote Superintendent O'Neill a letter setting forth the events of June 28 and concluding with this statement:

"See Mr. Wise letter of June 30—with instructions for me to make on my time sheet El Paso to Los Angeles in service and OH—Los A to El Paso a/c Violation of rules 25 & 64 so I made my time out accordingly.

* * * * *

Thanking you to approve my time."

July 15, Conductors (including Mr. Hellmers, presumably) were paid for the period June 15 - 30. Mr. Hellmers did not receive pay for the time related to the El Paso - Los Angeles trip. The record does not indicate whether or not he received a "Notification of Disallowed Time" in accordance with Rule 58:

"When time claimed by a conductor as indicated on his time sheet is changed or disallowed, the Timekeeping Department shall furnish written advice, with the returned duplicate time sheet, giving the reason why the time as claimed was not allowed, and specifying the rule under which the time as corrected was computed
* * *"

July 22. Superintendent O'Neill, in response to Mr. Hellmers' July 2 letter, wrote (by certified mail) that since, under the Agreement, New Orleans conductors have no jurisdiction over service arising on The Southern Pacific at El Paso, "it is my decision that your claim in this instance be denied."

July 27. Mr. Hellmers wrote Superintendent O'Neill, in the name of the O.R.C., requesting "an adjustment" of the complaint concerning June 28 which he described in detail. In conclusion, Mr. Hellmers wrote, "in the event you are unable to secure an adjustment as outlined in this letter please consider letter as a claim, arrange for a hearing as provided on Rule 51 of the Agreement, and notify me of the date set for hearing."

July 30. Superintendent O'Neill acknowledged receipt of Mr. Hellmers' July 27 letter which, he stated, "will be given careful consideration after which you will be advised further."

August 7. Superintendent O'Neill informed Mr. Hellmers, by letter, that (1) the Conductor's claim of July 2 (as contained in the time sheet and the letter) was considered to be a formal claim in accordance with Rule 51; (2) that claim had been denied on July 22; (3) Hellmers' July 27 letter was not accepted as a proper claim since it was a duplicate of the July 2 one; and (4) if Hellmers wanted to progress his July 2 claim further he should follow the procedures in Rule 51, paragraph three.

September 14. Mr. Hellmers wrote Superintendent O'Neill that (1) his claim (the July 27 one, presumably) had been filed within Rule 51's time limit, and (2) since a hearing as called for by the Agreement had been denied, the entire file was being forwarded to General Chairman Wise for handling.

September 21. Mr. Wise requested a conference with Assistant to Vice President R. J. Wurlitzer and urged that Mr. Hellmers' claim be paid since Superintendent O'Neill had failed to grant a hearing requested under Rule 51.

November 12. Following a November 5 conference, Mr. Wurlitzer informed General Chairman Wise that he was closing his file since Mr. Hellmers' September 14 appeal was not timely, coming well beyond August 22 (30 days from Superintendent O'Neill's July 22 denial). In any event, Mr. Wurlitzer

found no merit to the claim.

November 18. General Chairman Wise informed Mr. Wurlitzer that (1) Mr. Hellmers' July 2 letter was not a Rule 51 claim; (2) the actual claim was submitted on July 27; (3) a hearing had been denied; (4) the claim should be granted without further handling since the Company failed to provide a hearing.

* * * * *

The key question here is whether Mr. Hellmers' July 2 communication to Superintendent O'Neill constituted a Rule 51 claim. If so, the Superintendent's July 22 letter constituted a denial which should have been (but was not) appealed by August 22.

Unfortunately, the record does not contain evidence concerning the form in which Rule 51 claims are customarily submitted (if, indeed, a general form is utilized). The Organization asserts that Mr. Hellmers' July 2 letter merely represented a report to the Superintendent concerning an "unusual incident," submitted in accordance with the Book of Instructions: "Make a written report of any incident of unusual nature and turn in to the District Representative at the destination of the one way trip * * *."

However, there is no indication that Mr. Hellmers himself regarded his letter as constituting a report of an unusual incident. He did not state that this was its purpose nor, in fact, did he submit it "at the destination of the one way trip." To the contrary, he waited to submit it until he had received instructions from his General Chairman.

Of more weight is the fact that the letter was submitted at the same time as the time sheet. From this the Organization argues that the letter merely constituted a request that the time entry on the time sheet be approved. Again, unfortunately, the record does not indicate the form or manner in which time sheets are normally submitted or the contents of this time sheet in particular. Nor does the record contain a copy of "the returned duplicate time sheet, giving the reason why the time as claimed was not allowed * * *" which the Timekeeping Department is required to submit in accordance with Rule 58.

We are left only with the contents of the July 2 letter itself. Mr. Hellmers did not identify this letter as a Rule 51 claim or as an explanation of the reason for the payment requested in his time sheet. It might have qualified as either one, in our opinion. (Were it the former, it would have been timely under the provisions of Rule 51, paragraph one, which require that claim of an alleged rule violation must be submitted within 60 days of the occurrence.)

In light of the ambiguous nature of this letter, Superintendent O'Neill was justified in concluding that it represented a Rule 51 claim, particularly in view of Hellmers' reference to alleged violations of Rules 64 and 25 and to Mr. Wise's June 30 letter (which suggested that a claim be filed alleging violation of Rules 25 and 64 and which predicted that Management would take the position that Hellmers had no right to the claimed work since he held no seniority out of El Paso).

In any event, Superintendent O'Neill's July 22 letter should have made it

clear to Mr. Hellmers that his July 2 communication was being handled as a claim (which was denied). While the record contains little information on this point, it seems doubtful whether normal procedure, under Rule 58, calls for a formal, certified, denial letter from the Superintendent to an employee submitting a time sheet. Upon receipt of this denial, in our judgment, Mr. Hellmers could have either appealed in a timely manner or informed Superintendent O'Neill that he was mistaken in considering the July 2 letter to have been a Rule 51 claim. Instead, Mr. Hellmers submitted a "complaint" on July 27, making no reference whatsoever to the Superintendent's July 22 denial letter.

Additionally, the Superintendent's August 7 letter made it doubly clear that Management had proceeded on the basis that Mr. Hellmers' original claim was submitted July 2. Even if the Conductor disagreed, he still had until August 22 in which to file a timely appeal (without prejudicing his right to claim, then or later, that the complaint had been filed on July 27). Instead he waited until September 14.

In light of all these circumstances, in our judgment, Mr. Hellmers' grievance should be dismissed since, on the basis of the record here, it must be held that he failed to comply with Rule 51's time limits.

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 claim was not timely appealed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of September, 1966.