Award No. 15010
Docket No. PC-15573

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, 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 D. D. Williams, Los Angeles District, that:

1. The Pullman Company violated the rules of the Agreement between the Company and its Conductors, with especial reference to Rule 31, when it failed to promptly bulletin the conductor vacancy at AT&SF trains 124-15 and 14-123, for accounting purposes designated as Line 4512.

Because of this violation, Conductor Williams was caused to lose a trip in the above-mentioned run on August 13, 1963.

2. We now ask that conductor Williams be credited and paid, under the Memorandum of Understanding Concerning Compensation for Wage Loss, for the trip departing from Los Angeles on August 13, 1963.

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.

The facts in this dispute are as follows:

On July 30, 1963, Conductor M. T. Cooper, Los Angeles District, was awarded the vacancy on UP train #10, for accounting purposes designated as Line 685.

Prior to July 30, 1963, Conductor Cooper had been regularly assigned to the conductor run designated for accounting purposes as Line 4512-4504, on AT&SF trains 124-15 and 14-123 between Los Angeles-Grand Canyon Winslow-Los Angeles. When Conductor Cooper successfully bid off of the above run there was a known vacancy in the run, identified as Line 4512-4504.

On August 2, 1963, a bulletin announcing this vacancy, for bid by qualified conductors of the Los Angeles District, was posted. This bulletin expired at 3:00 P. M., August 12, 1963, and under the terms of the Agreement had to be awarded to the successful bidder by August 17, 1963. Con-

Hearing was held on the claim in the office of Superintendent R. W. Schulte, Los Angeles District, on October 17, 1963. A copy of the transcript of hearing is attached as Exhibit A.

Superintendent Schulte rendered his denial decision under date of November 1, 1963, in which he stated that he had reviewed the transcript of hearing and was of the opinion that Rule 31 had been complied with and that Conductor Williams had not been deprived of any work or compensation to which he was entitled (Exhibit B).

Under date of November 15, 1963, General Chairman A. G. Wise progressed the claim on appeal to the Company's Appeals Officer. In his letter of appeal to the Appeals Officer, the General Chairman changed the claim from one requesting 3 days' pay for an allegedly late bulletining of the vacancy to a claim for wage loss for trip departing Los Angeles on August 13, 1963, which represents 5 days' pay. A copy of General Chairman Wise's appeal letter, dated November 15, 1963, is attached as Exhibit C.

After conference on appeal January 24, 1964, the Company's Appeals Officer rendered his denial decision in which he stated that he could not agree that Rule 31 was violated in the manner complained of and further he could not recognize the General Chairman's request contained in his appeal letter modifying the claim to the extent that Conductor Williams be credited and paid for wage loss for trip departing Los Angeles on August 13, 1963. A copy of the Appeals Officer's denial decision is attached as Exhibit D.

The Organization progressed the claim to the Third Division, National Railroad Adjustment Board in letter dated June 21, 1965 (Exhibit E). (Exhibits not reproduced)

OPINION OF BOARD: On July 30, 1963, a regularly-assigned conductor run on the AT&SF trains 124-15 and 14-123, operating between Los Angeles-Grand Canyon-Winslow-Los Angeles, became vacant. This vacancy was not posted for bid until August 2, 1963, 72 hours later. The contention is that Carrier did not bulletin the assignment promptly as required by Rule 31 (a), which provides, in part, as follows:

> "RULE 31. Bulletining of Runs. (a) New runs and each assignment (side) in a run that has preferred assignments (sides) shall be promptly bulletined for a period of 10 days (240 hours) in the district where they occur. Any of the following runs known to be of more than 31 days' duration shall be promptly bulletined for a period of 10 days (240 hours) in the district where they occur:
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> 1. Temporary runs.
> 2. Seasonal runs.
> 3. Vacancies.
>
> "Conductors desiring to bid for such runs or assignments shall file their applications with the designated official within the 10-day period they are posted, and awards shall be made prior to the start of the signout period on any day within 5 days (120 hours) thereafter on the basis of seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. Conductors bidding on more than one bulletined run or assignment shall specify in their applications their first choice, second choice, etc."

As a result of Carrier's lack of promptness, the Employes claim that work properly that of a regularly-assigned conductor was allocated to an

extra conductor. Had Carrier posted the bulletin promptly on July 30, Claimant would have received the assignment as a regular conductor on August 13 and would not have been deprived of one round trip.

Carrier maintained that it acted with reasonable promptness in accordance with the intent and meaning of Rule 31 (a). Carrier pointed out that the Rule required that the notice be bulletined for ten days after which the position was to be awarded within five days. Since the position was awarded only two days after the bulletin period ended, Carrier argued that Claimant lost no time. Even if the bulletin had been posted earlier on July 30, the Carrier might still have waited the full five days permitted and Claimant would have been awarded the position on the same day as he actually received it.

In Award No. 14223, we said "the word 'promptly', although not capable of exact measurement, requires action without undue delay and what constitutes undue delay depends on the circumstances of the case. Claimants have the right to expect appointment quickly. . . . At this point the burden is on the Carrier to show that the delay was due to the force of circumstances."

We think the principles announced in that award apply here. The parties had bargained for prompt bulletining. While we do not agree that it means immediate action as was urged by the Claimant, the word "promptly" does involve the notion of relative speed if not absolute speed. We cannot say that a delay of 72 hours was prompt, nor can we say that it was not prompt. In an industry as time conscious as the Railroad Industry, a delay of 72 hours requires an explanation. The burden was on the Carrier but there is nothing in the record which in any way explains or justifies the delay.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December 1966.

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