



Award No. 17435

Docket Number PC-17930

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, 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, Division 720, claims for and in behalf of Conductor A. W. Higley, Miami District, that the Agreement between The Pullman Company and its Conductors, with especial emphasis on Rule 39, was violated when:

1. On May 21, 1967, he was not assigned to Seaboard trains 22-21, Miami, Florida, to Wildwood, Florida, and return.
2. We now ask that he be compensated \$42.35 which is the amount he would have earned had he been properly assigned to this train.

Rules 25, 38 and 42 are also involved.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, and amendments thereto, bearing the effective date of September 21, 1957, revised January 1, 1964 and subsequent dates, 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 July 15, 1967, R. L. Deal, Local Chairman, ORC&B Division 720, wrote C. J. Karr, Superintendent, The Pullman Company, Miami, Florida, initiating the claim from which the present dispute arose. The dispute thus initiated has been progressed up to and including the highest officer of the Company designated for this purpose whose letter denying the claim is attached as Employees' Exhibit No. 1.

Under date of May 9, 1968, H. N. Chancey, General Chairman, ORC&B Pullman System, wrote R. J. Wurlitzer, Asst. to Vice President, Operating, The Pullman Company, advising him that his decision was not satisfactory. Copy of that letter is attached as Employees' Exhibit No. 2.

II

All facts pertinent to this dispute are fully set out in the oral presentation made at the initial hearing on this claim. Copy of the transcript of that hearing is submitted herewith and identified as Employees' Exhibit No. 3.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: According to the record, the Miami District, on April 20, 1967, made a calculation as to the requirements of extra conductors during the month of May, 1967. This calculation indicated that during the month of May 1967, the extra work of the Miami District would approximate 400 hours of work including three special trains requiring the services of a conductor to operate via (1) ACL Coastliner, Miami to New York, on May 3 (2) SCL Special, Miami to Hamlet, on May 24 and (3) ACL Special, Miami to Richmond, on May 24. As of April 20, there was only one extra conductor carried on the extra board. On the basis of the known requirements at that time, it was evident that it would be impossible to protect the volume of extra work from the extra board with only the one extra conductor. All conductors carried on the Miami seniority roster were at that time working either as regular or extra and no conductors were on furlough. Therefore, arrangements were made to obtain a conductor on temporary transfer as provided in Rule 42 of the Agreement. Conductor L. Jones was, on May 1, 1967, transferred from Louisville, Kentucky, to Miami, Florida and placed on the extra board May 2, 1967.

On May 21, 1967, Conductors L. Jones and A. W. Higley appeared on the signout sheet with total credited and assessed hours of 75:45 and 78:40 respectively. On that date Conductor Jones with the least number of credited and assessed hours was assigned to Line 6905, SAL train 22-21, Miami, Florida to Wildwood, Florida and return, with a reporting time of 12:55 P.M., May 21, 1967.

Under date of July 15, 1967, Local Chairman R. L. Deal, addressed a letter to Superintendent C. J. Karr, in which he alleged the Agreement was violated with especial emphasis on Rule 39, when on May 21, 1967, Conductor A. W. Higley was not assigned to SAL train 22-21, Miami, Florida, to Wildwood, Florida and return. Mr. Deal requested that Conductor Higley be compensated \$39.95 (subsequently adjusted to \$42.35 to reflect retroactive wage increase) which is the amount he would have earned had he received such assignment. Also Mr. Deal requested that a hearing be held in the event claim was not granted. (Exhibit A, p. 1)

Following hearing on December 5, 1967 (Exhibit A) Superintendent C. J. Karr rendered denial decision dated January 2, 1968 (Exhibit B).

Under date of January 27, 1968, General Chairman H. N. Chancey, progressed the claim on appeal to the Company's appeals officer. A copy of General Chairman Chancey's letter of appeal is attached as Exhibit C.

Following conference on appeal the Company's appeals officer rendered denial decision under date of April 25, 1968 (Exhibit D).

The Organization progressed the claim on appeal to the Third Division, National Railroad Adjustment Board, under date of October 1, 1968. (Exhibit E).

(Exhibits not reproduced)

OPINION OF BOARD: Carrier's Miami Conductor Roster, issued January 1, 1967, listed the name of eight conductors. These conductors were utilized to operate two runs, one from Miami to Chicago, Illinois, requiring five conductors and one from Miami to Wildwood, Florida, requiring two conductors. The additional conductor, in this case, A. W. Higley, the instant

Claimant, was carried to cover relief for vacations, sickness and extra trains. When additional exigencies arose—extra trains, multiple vacations and the like, an additional conductor was co-opted on a temporary transfer from another district.

Some time before May 1, 1967 Carrier anticipating operation of extra trains for a period of approximately 30 days in the Miami District, bulletined the Louisville Agency for an additional conductor. Conductor Lee Jones was the successful applicant and was transferred to the Miami District on May 1, 1967.

However, the extra business anticipated by Carrier did not materialize. Conductor Jones was placed on the extra board at Miami on May 2, 1967. He was assigned to actual service on May 5, 1967 (reporting May 6).

The specific act protested in this claim is the assignment of Jones on May 21, 1967 to SAL trains 22-21, Miami to Wildwood and return. It is Employee's contention that Jones should have been returned to his home district and that Conductor A. W. Higley, Claimant, should have been given and was improperly denied said assignment.

As factual background, Employees cite the fact that on May 2, 1967, when Jones was added to the Miami extra board, Claimant had a total of 16:15 hours and remained with the same total until 7:40 A.M., May 16. For the month of May 1967, Higley and Jones together earned a total of 277:25 hours. Full time for both would have required 360 hours. It is argued from these figures, that Carrier has violated Rule 39, which states, in part, "The intention under this Rule is to allow conductors working on the extra board an opportunity to average as nearly as possible full time before additional conductors are recalled from furlough, obtained by transfer, or employed." It is conceded that Rule 39 also states that the extra board shall be maintained by using thereon "the number of conductors which shall afford as nearly as possible minimum earnings of three-fourths of a basic month's pay for each conductor who does not lay off of his own accord". However, in addition to the statement of intention to afford an opportunity to "average as nearly as possible full time" before resort to outside extras, Rule 39 also states:

It is not the intention to restrict the earnings of extra conductors to three-fourths time by maintaining an unnecessarily large number of conductors on the extra board."

Employees take the position that Carrier acted prematurely in bringing in Conductor Higley and in default when it failed to return him when the work for which he had been transferred did not develop.

Carrier responds by pointing out that in April, 1967, extra Conductor E. Hawkins, obtained by transfer from the Jacksonville District, was carried on the Miami extra board for the first fourteen days of the month. Yet, even with Conductor Hawkins on the board for those fourteen days of the month, Conductor Higley, the Claimant, earned in April in excess of three-fourths of his monthly rate.

Inasmuch as the anticipated extra work for May included three special trains to New York on May 3rd and to Hamlet and Richmond on May 24,

Carrier argues that it was a reasonable expectation by management that Higley alone could not have performed all of the anticipated extra Miami work.

Carrier also points out that in spite of the failure to realize the anticipated extra work, Claimant's earnings for the month of May actually exceeded three-fourths of his monthly rate.

Examination of the record fails to reveal information critically needed for determination of this claim. The record does not disclose when it became known to Carrier that anticipated extra business was cancelled. This is controlling on the consideration of whether Carrier exercised good faith within the standards set down by governing Rules.

Inasmuch as this Board is limited to the submitted record, the absence of such needed information necessarily compels a finding that a probative case has not been made and the claim must be dismissed because of inability of Board to reach its merits.

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 there was no showing that Agreement was violated.

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 11th day of September 1969.