

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM
THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and in behalf of Conductor I. A. Todd, of the Chicago Southern District, that Rule 38 of the Agreement was violated when, on September 17, 1946, he was not given the assignment reporting 6:30 P. M. for I. C. Train No. 3, which was given to Conductor B. R. Petkus. We now ask that Conductor Todd be compensated for the time made by Conductor Petkus on this trip.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between The Pullman Company and Conductors in its service bearing effective date of September 1, 1945. Also a "Memorandum of Understanding", Subject: "Compensation for Wage Loss", dated August 8, 1945, attached as Exhibit No. 1. This dispute has been progressed up to and including the highest officer designated for that purpose, whose letter denying the claim is attached as Exhibit No. 2.

Rule 38 of the agreement effective September 1, 1945, reads in part as follows:

"(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, except as provided in paragraph (e)." (Paragraph (e) not involved in this case.) (Underscoring ours.)

"(b) * * *

"(c) Until service has been performed in the current month, the extra conductor with the least number of hours of service in the preceding month shall be called first. Then the conductor with the least number of hours of service in the current month shall next be called." (Underscoring ours.)

* * *

"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. How-

reached although Mr. Stolki made two attempts to notify him of the assignment (Exhibit B, pp. 4-5).

In the hearing held before District Superintendent Kenner on October 29, 1946, on this claim, the representative of Conductor Todd did not attempt to argue that Company records were false or that Mr. Stolki and Conductor Freeman had misrepresented facts. He did argue, however, that the efforts made by the Company to contact Conductor Todd were not sufficient and that having failed to contact Todd at 2:25 P. M. the Company should have waited ten or fifteen minutes and called again (Exhibit B., p. 7). In this connection the attention of the Board is directed to paragraph (f) of Rule 38, quoted above, which provides that a conductor who misses a call shall be assessed the average daily hours only once each day and shall not be called again that day unless all available local extra conductors have been used. Clearly, having been unable to contact Todd in two attempts, the Company was constrained to pass on to the next conductor in line for assignment, Conductor Petkus, and furnish him with the assignment on Illinois Central train No. 3, which assignment would have been given to Conductor Todd had he been available. This is precisely the action the Company took. Additionally, the assignments on Big Four train No. 410 and Michigan Central train No. 2/40 were properly allotted to the conductors next in line; namely, Conductors Freeman and Lang. Thus, having been unable to contact Conductor Todd at 2:25 P. M., the Company would be required to furnish Conductor Todd an assignment only if all available local extra conductors had been assigned and there remained other assignments to be filled. These circumstances did not exist in the Chicago Southern District on the afternoon of September 17, 1946. There were local extra conductors available to fill all assignments arising on that day.

CONCLUSION.

The facts in this case clearly support the position of the Company that Conductor Todd was not available for service on the afternoon of September 17, 1946. The Company records clearly show that Conductor Todd was telephoned for assignment at 2:25 P. M. on the above date but that the Company received no answer to its call. Further, Mr. Stolki, in charge of assigning conductors to service on the date in question, states that he telephoned Conductor Todd and received no answer. In order to satisfy himself that he had not dialed the wrong number, he re-dialed Conductor Todd's number but still received no answer. Finally, Conductor Freeman, one of the conductors who received an assignment on September 17, states that he talked to Mr. Stolki by telephone on the afternoon in question and was informed by Mr. Stolki that there were conductors in line for assignment ahead of him but that Conductor Freeman's services would probably be needed. During this conversation Mr. Stolki stated that he would call Freeman after he had called Conductor Todd since the latter was due out first. When Mr. Stolki telephoned Conductor Freeman to assign him to service he mentioned to him that he had been unable to reach Conductor Todd for assignment.

Thus, it is apparent that the Company attempted to make Conductor Todd available for service but was unsuccessful in two attempts. Conductor Todd was therefore not "available" as that term is defined in Rule 38. Having been unable to contact Conductor Todd for assignment, the Company passed on to the conductors next in line and assigned them to service in full conformity with the provisions of Rule 38. Conclusively, the claim presented in behalf of Conductor Todd is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Employees claim that Conductor Todd was deprived of an assignment as extra conductor on I. C. Train No. 3 on September 17, 1946, in violation of Rule 38 of the controlling Agreement, the pertinent part of which is as follows:

"(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, * * *."

"(c) Until service has been performed in the current month, the extra conductor with the least number of hours of service in the preceding month shall be called first. Then the conductor with the least number of hours of service in the current month shall next be called."

Examination discloses that on the day in question on account of illness of another I. A. Todd was the extra conductor entitled to the first call. On that date there was need for a call for an extra conductor for each of three trains, the first with reporting time, 6:30 P. M., the second, 9:15 P. M., and the third, 9:30 P. M.

By recognized custom and practice calls were made between 2:00 P. M. and 4:00 P. M.

At 2:25 P. M. the records and other evidence of the Carrier disclose that the Assistant Superintendent of the Carrier called the telephone number of Todd and heard the telephone ring. There was no response. He hung up and immediately dialed the number again, and again there was no response. The conductor next in order was thereupon promptly called and given the assignment. The assignment was given to the conductor next in order on the ground that Todd was not available within the meaning of Rule 38 since he did not respond to the telephone calls. Thus Todd lost the assignment.

Some doubt is cast upon the showing of the Carrier by the submissions of the Organization with regard to the call but it appears that this doubt is groundless.

Todd said that some hours before, anticipating a call to work, he went home to get some sleep, that he did not hear his telephone ring and it was not heard to ring by others who were there with him. No reason appears for doubting his statement.

The question for determination here then narrows itself down to the single proposition of whether or not the Carrier was justified in considering Todd unavailable on the basis of the effort made, as herein described, to get the call to him.

Todd was entitled to be called. The Carrier was obligated to call him. The call period was from 2:00 P. M. to 4:00 P. M. Todd was at home waiting for the call. Within the definition of the term Todd was "available" for the work on the day in question.

In the light of the reciprocal obligations of the Agreement it appears not unreasonable to require that, Todd being available, the Carrier under the circumstances should have used greater diligence in an effort to extend the call. Of course, if the showing here indicated an urgent and immediate need a different attitude would be required. The record here does not so show. The reporting time was four hours and five minutes later and the call period still had one hour and thirty-five minutes to run.

Under all of the circumstances as disclosed by the submissions we conclude that his claim should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

The claim has been sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of April, 1948.