

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, 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 the Philadelphia District extra conductor, who should have been assigned, pay in the amount of 7/24 of a day covering the assignment in Line 2423, Philadelphia to New York, and in the amount of 7½ hours, a minimum day, for a return trip deadhead New York to Philadelphia, because of not being used on May 18, 1946, when E. L. Kannapel, who was promoted to Temporary Relief Day and Night Agent, Philadelphia District office, was assigned to do conductor's work on Philadelphia-New York train leaving Philadelphia 4:00 P. M., May 18, 1946, in violation of Rules 22 and 38 of the agreement, effective September 1, 1945.

EMPLOYEES' 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.

Pullman Conductor R. D. Carmer, of the Pennsylvania Terminal District, was assigned in Line 2423 between New York and Philadelphia, and on May 18, 1946, was scheduled to depart from Broad Street Station, Philadelphia, in charge of Pullman equipment on PRR train #220 at 4:00 P. M. The service in this line on that date called for two round trips by the conductor between New York and Philadelphia. Conductor Carmer was scheduled to report for duty at 3:25 P. M. On this date Train #220 left Philadelphia at 4:40 P. M.

Conductor Carmer declined to fulfill his assignment on Train #220, May 18, 1946. When this became known, Conductor J. R. Shellenberger, who was assigned to station duty at the time, was instructed to take charge of the Pullman equipment in Train #220. He failed to board the train before it left Broad Street Station. Arrangements were then made by the Carrier for E. L. Kannapel, Temporary Relief Day and Night Agent, Philadelphia District office, to board the train at the 30th Street Station, Philadelphia, and perform the conductor's work on Train #220, Line 2423, Philadelphia to New York, May 18, 1946.

Rule 64 (a) of the agreement reads:

"(a) Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either

assign an extra conductor to Line 2423 on the date in question, Management in all likelihood would have been enabled to assign the conductor to service out of New York. In other words, it is impossible at this time to determine what disposition would have been made of an extra conductor upon arrival in New York under the circumstances present here.

CONCLUSION

The Company has herein shown that the condition complained of arose in the Broad Street Station, Philadelphia, on May 18, 1946, because the regularly assigned conductor arbitrarily refused to go out in his assignment on the grounds that the regular train crew was not operating in their assignments. The Company has shown that no unassigned Philadelphia District conductor was "available" for assignment on PRR train No. 220, as that term is defined and interpreted in Rule 38 of the Agreement. Also, the Company has shown that in the emergency Temporary Relief Day and Night Agent Kannapel was assigned at the 30th Street Station to supervise the operation, at which point no extra conductor was available. The argument of the Organization that the Company had ample time to fill the assignment is without basis in fact and clearly unsound.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of the fact Carrier operated a train from Philadelphia to New York on May 18, 1946, without a Pullman conductor, contrary to Rule 64 which requires such a conductor on trains carrying more than one Pullman car. Even though Carrier did so, still we are of the opinion Petitioner may not prevail because of the conduct of the regularly assigned conductor under the circumstances.

Pullman Conductor Carmer was regularly assigned to this train which was ordinarily scheduled to leave the Broad Street Station at 4:00 P. M. At that same hour on May 18, 1946, there was threatened to be a strike by certain railroad labor organizations, but not by Pullman employees. However, if the strike was called, the railroad expected to operate this train as soon as it could assemble a sufficient crew. Upon learning of this, Carmer informed the day agent he would not work unless a regular crew operated the train. In fact, he later refused to work, but returned deadhead to New York on this train. Another conductor on station duty was assigned to take charge of the train. While he was getting his bag the train left the station. Upon being advised the train was not covered, Carrier found there was no extra conductor available at the 30th Street Station, so assigned a temporary relief agent to operate the train to New York in place of a conductor.

The essence of Petitioner's claim is that Carmer, the regular conductor, was due to report at 3:25 P. M., and since the train did not leave until 4:31 P. M., Carrier had time to assign another conductor to substitute for him.

The facts show that Carrier did assign a station duty conductor, but he missed the train. We should not penalize Carrier for "lack of foresight," as Petitioner contends, when the condition complained of resulted from the uncertainty and delay on the part of the regularly assigned conductor. The record shows that the extra conductor was instructed to cover the run with reasonable dispatch after it was learned the train could be operated and the regularly assigned conductor would not cover it.

It follows the claim must be denied.

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

That the Petitioner is not entitled to recover under the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1948.