

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 W. C. Apgar of the Pennsylvania Terminal District that Rule 38 of the Agreement was violated when, on April 17, 1947 he was entitled to an assignment on PRR Trains Nos. 5-22, New York-Chicago, which was given to Conductor Nielsen. Claim is also made that Conductor Apgar be compensated for the time made by Conductor Nielsen 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" captioned "Subject: Compensation for Wage Loss", bearing date of August 8, 1945, attached as Exhibit No. 1. This dispute has been progressed in accordance with the Agreement up to and including the highest officer designated for that purpose, whose letter denying the claim is attached as Exhibit No. 2.

On April 17, 1947, Conductor Apgar was at his home station available for assignment. When he arrived at home station on the morning of April 17 he was third on the list of those conductors, who, in consideration of the number of their credited hours were next to be given assignments to service. Had Conductor Apgar been called in his proper turn he would have been assigned to operate PRR trains 5-22, New York-Chicago, and return, leaving New York afternoon of April 17, 1947. He was not called for this assignment, thereby losing the earnings accruing thereto, and in addition he was assessed 6 hours 55 minutes under the provision of Rule 38 (f) of the Agreement, reading:

"The average daily hours shall be assessed against each local conductor's total credited hours when he misses a call or for each day he is off duty for any cause."

Conductor H. F. Nielsen, who was holding a station duty assignment at Pennsylvania Station, New York, commencing 1:00 P. M., April 17, was assigned to operate PRR trains 5-22 instead of Conductor Apgar. Both Conductor Apgar and Conductor Nielsen were extra conductors of the Pennsylvania Terminal District.

Rule 38 (a) of the Agreement reads as follows:

"All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under

OPINION OF BOARD: The question for decision is whether Conductor Apgar was available on April 17, 1947 within the meaning of Rule 38 (a), current Agreement, when an assignment on Trains Nos. 5-22, New York-Chicago, was given to Conductor Neilsen.

Rule 38 (a) provides:

"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)."

An agreed upon definition of the word "available", as used in the foregoing rule, is:

"'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."

The evidence shows that Conductor Apgar resides in Woodbury, New Jersey, but operates out of the Pennsylvania Terminal District in New York. On April 17, 1947, the day here involved, he came into New York in service at 7:50 A. M. He knew at this time that he was low in hours and that he was eligible for further assignment during the signout period, 11:00 A. M. to 2:00 P. M. on the same day. He went home to Woodbury, a point 100 miles from New York, knowing that telephone service was interrupted because of a strike and that long distance calls could not be put through. It requires 2½ to 3 hours travel time from Woodbury to New York.

The evidence shows that the signout clerk tried to telephone him on four occasions between 11:25 and 11:55 A. M. without success. Conductor Apgar contends that the Carrier customarily sent wires during the telephone strike but that they failed to do so on this occasion and that his failure to report for the assignment was therefore due to the fault of the Carrier. There is some conflicting evidence in the record concerning an agreement between the signout clerk and Apgar to the effect that Apgar would report each day at 2:35 P. M. without being called. The signout clerk did not rely upon any such agreement, as is evidenced by his attempts to call Apgar by telephone. The signout clerk was aware of the interrupted telephone service when the calls were attempted. Under the evidence, he was doing a vain thing when he attempted it. He did not send the wire because he claimed it would be useless in view of the time it took for its delivery and the travel time to New York.

Under the state of facts could the Carrier have contacted Apgar and assigned the work in time for him to reach his reporting point by scheduled reporting time? The record is clear that all parties knew that telephone service was interrupted. The signout clerk attempted four telephone calls which he knew would not go through. Consequently, he made no good faith attempt to call Apgar at all. His claim of an understanding with Apgar to report at 2:35 P. M. does not appear to be consistent with the attempts he made to reach Apgar by telephone. He does not deny that telegrams had been used during the telephone strike. We think the Carrier was obligated, under the situation here shown, to promptly notify Apgar by telephone that he was assigned to go out at 2:50 P. M. What the Carrier did do in this respect was equivalent to the making of no attempt to notify at all. The facts warrant an affirmative award.

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 Employees involved in this dispute are respectively carrier and employe 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 Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1948.