Award No. 5492
Docket No. PC-5441

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, 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 M. Martin, Kansas City District, that Rule 38 and 64 of the Agreement between The Pullman Company and its Conductors were violated when:

(1) Conductor Martin was removed from his assignment, Los Angeles, California, to Kansas City, Missouri, on Santa Fe 2nd No. 24 at Fort Sumner, New Mexico, on October 25, 1949.

(2) We now ask that Conductor Martin be compensated for the remainder of the trip Fort Sumner to Kansas City.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in the service of The Pullman Company dated September 1, 1945, Revised January 1, 1948.

This dispute has been progressed in accordance with the Agreement. Decision of the highest officer designated for that purpose, denying the claim, is attached as Exhibit No. 1.

Copy of Memorandum of Understanding, subject: "Compensation Wage Loss" dated August 8, 1945, is attached as Exhibit No. 2. The facts in this dispute are, as follows:

Under date of October 22, 1949, Conductor Martin was given an "Assignment to Duty" slip by the Los Angeles District, which reads, as follows:

"ASSIGNMENT TO DUTY Conductor THE PULLMAN COMPANY

Los Angeles District Date 10-22-49

Conductor M. Martin Kansas City District Agency

Report at Laupt 12:45 P TIME ZONE 4

DEPART 1:30 PM 10-22-49

TO PERFORM THE FOLLOWING SERVICE Extra Service SFE

2/24 with Dental

'The Carrier contends, however, that under the rule as interpreted North was not entitled to be called. The essence of the claim is by the Organization for violation of the agreement. The claim for the penalty on behalf of North is merely an incident. That the claim might have been urged in behalf of others having, as between themselves and North, a prior right to make it, is of no concern to the Carrier. Awards 571, 1058, and 1605. That does not relieve it of the obligation to pay the rate stipulated for a call. The others are making no claim; and if they should the Carrier would not be required to pay more than once.' "

In the hearing on the claim of Conductor Martin, the local chairman of the Organization contended that Conductor Pritchard was not entitled to compensation for the service trip on Santa Fe train No. 2nd 24 and argued that Conductor Martin alone was entitled to be paid for this service. The remarks of the local chairman are as follows (Exhibit A, p. 10):

"C. R. CHRISTY: Conductor Pritchard was not entitled to pay in my mind. Conductor Martin was the only conductor available at the point and he was working toward his home district. He is the only one who is entitled to pay for that trip. If you are big-hearted enough, and I have never known you to be before, if you pay a man for something he is not entitled to, that is your business."

Also, in the hearing one of the representatives of the Organization stated that the Company had paid the wrong conductor as follows (Exhibit A, p. 11):

"P. G. HOFFMAN: I think that is the contention, that the claim was properly paid, but to the wrong man."

In view of the holdings of the Third Division in Awards 1605 and 2282, these arguments of the Organization must be rejected. As pointed out in the hearing by the representative of Management (Exhibit A, p. 10), the point at which Conductor Martin detrained and from which point Santa Fe train No. 2nd 24 operated without a conductor was an outlying point under the jurisdiction of the Fort Worth District. Therefore, a Fort Worth District conductor had a legitimate claim to that service. It would have been futile in view of the holdings of the Third Division in the awards cited above for the Company to attempt to defend itself against the Organization's claim in behalf of Conductor Pritchard on the basis that Conductor Martin might have been entitled to that work and might submit a claim for it. Having compensated Conductor Pritchard for a service trip Clovis to Newton and having operated Conductor Tate of the Knasas City District in service Newton to Kansas City, the Company should not be required to compensate Martin for that same work.

CONCLUSION

The Company submits that the facts of record support its position in this dispute. The Company had the right to annul the assignment of Conductor Martin and reassign him to Santa Fe train No. 2nd 23 in the emergency which existed. Neither Rule 38 (b) nor any other rule of the Agreement precluded the action taken by the Company. Further, the fact that a prior claim was submitted by the Organization for compensation for the work claimed by Conductor Martin, which prior claim the Company paid, operates as a bar to the Organization's claim in behalf of Martin. The claim in behalf of Conductor Martin is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, an extra Pullman conductor of the Kansas City District, was given an assignment at Los Angeles to special

service, Los Angeles to Kansas City. It was contemplated that he would be in charge of six Pullman cars occupied by conventioneers en route to Chicago via Kansas City during the Los Angeles-Kansas City leg of the trip. However, at Fort Sumner, New Mexico, he was removed from this assignment and instructed to take charge of two Pullman cars en route to Los Angeles. The convention-bound cars continued eastward unattended until a conductor was supplied at Newton, Kansas. A regularly assigned Houston District conductor had been in charge of the two Pullman cars of his changed assignment from Houston to Clovis, New Mexico, and the cars had proceeded west from that point to Fort Sumner without a conductor.

The circumstances giving rise to the conductor requirement at Fort Sumner, as related by the Carrier, follow. Santa Fe train No. 23 regularly operates Chicago to Los Angeles in two sections: the first, ordinarily all-Pullman, and the second, all-coach. The Pullman cars from Houston were delayed by a freight wreck and engine-trouble. The Santa Fe Railroad elected to let the first section proceed without its usual Pullman pick-up at Clovis and held the all-coach train to receive the Houston late arrival. It thus created a need for a Pullman conductor on the second section under the requirements of Rule 64. Extra conductor needs at Clovis are taken care of from Ft. Worth, 477 miles distance, but time did not permit handling from that point in this instance.

A month prior to the filing of the instant claim, the Local Chairman of Division 708 asserted a claim on behalf of an extra Ft. Worth conductor, claiming that he should have been assigned to take charge of the Pullman equipment abandoned by this claimant, during its trip Clovis to Newton, Kansas. This claim included deadhead trip, Newton to Kansas City. The claim was allowed under Rule 64 (a) and payment made pursuant to a Memorandum of Agreement, dated May 16, 1949. Subsequently the instant claim was filed by the Local Chairman of Division 701 on behalf of claimant covering the same trip but from Fort Sumner to Kansas City.

Two questions are presented:

(1) Whether the Company possessed the right to annul or change claimant's assignment under the circumstances stated, and

(2) If not, was the payment of the Division 708 claim a bar to the Division 701 claim because covering the same work?

We wil consider the above questions in inverse order because a finding for the Carrier in respect to (2) above would render useless consideration of the case upon its merits for purposes of (1).

We frequently rule that the employer will not be subjected to the double payment of a claim. Such bald assertion must be weighed in connection with the facts involved in the case there under consideration. Usually the occasion for such a ruling arises where the employer defends against a claim upon the ground that there is another or other employes possessing superior rights to the work than claimant. But in such cases not only the same work would be involved, in event of plurality of claims asserted, but also, and of equal regard, the several claims would be based upon violations of the same rule or rules. Awards 1605 and 2282, cited by this employer, are examples of this type of case. The rule is applicable to the case before us only to the extent hereinafter indicated.

District 708 claim (Ft. Worth) was based upon the admitted violation of Rule 64 (a) entitled "Conductor and Optional Operations". Payment was made under the Memorandum of Agreement dated May 16, 1949. On the other hand, the instant claim from District 701 is based not only upon Rule 64 (a) but also on an entirely different section of the Agreement, namely, Rule 38 (b) entitled "Operation of Extra Conductors", involving a subject to which the earlier claim had no reference or relation.

Rule 38 (b) provides:

"Extra conductors shall be furnished an assignment slip showing time and place required to report for duty, also destination. * * *."

The rule also provides for the circumstances under which the extra conductor's assignment may be annulled.

Rule 64 (a) under which the first claim was paid, reads:

"Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, in service, * * *."

The Memorandum of Agreement, above referred to, provides that the Pullman Company will not assert an inability to place a conductor on the cars account non-availability but will make payment to the conductor entitled to the assignment.

While Rule 64 (a) is advanced as one of two grounds for the instant claim, it is beyond our consideration here for reason that the Company has already compensated for its violation and the beforementioned rule against plurality of claims applies.

This claim must, therefore, stand or fall on the interpretation given to Rule 38 (b) which we wil now consider in light of the facts stated.

The Company maintains that "in an emergency situation it has the right to annul the assignment of an extra conductor in order to reassign him to another assignment in which there is, in the judgment of management, a greater need for his services." No rule is cited in support of this position. The Organization objects to recognition of any such discretion in management, pointing to Rule 38 (b) with its stated exceptions, none of which encompass the Company's claimed right.

When designating the trip destination, the Company qualified the specification by the phrase "unless changed en route". This qualification must be held ineffective and void because not provided for by the assignment rule. See National Mediation Board Docket No. 3099. To recognize this qualification would render Rule 38 (b) so indefinite that little further value would attach to its inclusion in the Agreement. We cannot presume that the parties intend to do a useless act and make a meaningless rule. The exceptions previously noted all concern destination and unless there be a firm, initial commitment, they too are without meaning or effect.

Train delays occur sufficiently often with the resultant disruption to assignments that we would expect to find some rule in the Agreement to meet such situations. Such is not covered in Rule 38 (b) where permissible annulments are listed, none of which are applicable here. It is not within our authority to supply a further exception to Rule 38 (b) when the parties themselves have neglected or otherwise failed to negotiate one. Our assumption of the need for coverage of such situations by the Agreement finds basis in the submission. A memorandum from the Company's Ft. Worth office relates, in part: "When Santa Fe No. 97 is running late, it is customary for the railroad to permit Pullman section to proceed and hold the coach section to connect with No. 97 and receive the cars of lines 3000 and 4506." The Organization also asserts that upon a number of past occasions these cars have proceeded west from Clovis without a conductor. Under these circumstances, we cannot consider this case in the light of an emergency. Carrier alone is responsible for its operational arrangements and it is not our prerogative nor intention to suggest how it should conduct its business. It is within our province to observe, however, that under methods followed at the time of this incident, extra conductors were 477 miles distant and a minimum of fourteen hours' travel time must be consumed in making one avail-

able when needed. If this arrangement breeds problems and claims, they are solely of the Company's making and cannot be excused under a plea of non-anticipated emergency. The claim is well based. Rule 38 (b) was violated.

Management exercised its prerogative in determining where claimant's services could be used best when making the assignment in Los Angeles. Through the negotiation of Rule 38 (b) we must conclude that the Company bargained away its prerogative to later make a change in an assignment of the type here involved.

The violation of Rule 38 (b) occurred when the Company annulled the original assignment and claimant was placed upon the westbound train. Violation of Rule 64 (a) occurred when the convention-bound train subsequently proceeded eastward without a Pullman conductor. Thus we had two rule violations. The work, common to both claims, is simply the measure of the compensation due to different claimants for two different and unrelated rule violations, both of which are compensable. See Awards 4562 and 3832.

We postscript an already too lengthy opinion to state that this docket could well be considered a model for future filings with this Division. The respective statements of the dispute indicate that the parties took care to resolve any differences in facts which may have existed through conferences upon the property. As a result, the Division has been furnished with a clear and concisely stated factual picture, chronologically developed, which favors full and correct understanding. The respective arguments are directed to the issues and the text is free of disparaging personal references having no bearing upon the case, hence most effective. Finally, undue repetition of facts and arguments is avoided in the submissions and, because the issues were fully developed before the case was lodged with the Division, the necessity for a series of rebuttal and surrebuttal briefs is not present. Such practices, if uniformly adopted, would not only assist Referees in the avoidance of error based upon false factual assumptions but would assist in the reduction of case backlogs on the several Divisions.

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 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 claimant was removed from his assignment without cause and Rule 38 (b) of the Agreement was violated thereby.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of September, 1951.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 5492

Docket No. PC-5441

NAME OF ORGANIZATION: Order of Railway Conductors, Pullman System.

NAME OF CARRIER: The Pullman Company.

Upon application of the representatives of the employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Organization requests an interpretation of the Award "Claim sustained" when applied to the facts set forth in its petition.

The matter is one of application rather than interpretation. The Opinion, Findings, and Award are seemingly free of ambiguity or question. The question now presented was not raised or argued in the original proceedings. However, to avoid further delay in the settlement of the controversy, an expression of opinion is made.

Rule 20 of the current Agreement between the parties provides in part as follows:

> "* * *time in excess of 235 hours shall be paid for at the rate of time and one-half."

Conductor Martin's total time during October, 1949, exceeded this figure. Question: should the time allowed Conductor Martin under Award 5492 (12:40 hours) be compensated for at the straight time rate or at the overtime rate? The Organization relies upon paragraph one of the Memorandum of Understanding of August 8, 1945.

We cannot agree that the before mentioned paragraph has any application to the case at hand. It is an interpretation of the parties and by its express terms tied to the application of Rule 53 entitled "Record Cleared of Charges." This Rule as well as those immediately preceding pertain to discipline cases. The paragraph mentioned appears to spell out the compensation due a conductor removed from service and later cleared of the charges upon which the removal from service was based. If any paragraph of the Memorandum of Understanding has application in the instant case it is the second paragraph which the Organization concedes provides only for straight time. We are not persuaded by the distinction attempted to be drawn by the Organization between failure to give an assignment and removing from an assignment once given; both are rule violations. The respective motives are immaterial.

The Company's action in compensating Conductor Martin for 12:40 hours at straight time rate was proper, we find.

Referee J. Glenn Donaldson who sat with the Division, as a member, when Award No. 5492 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of November, 1952.