

Award No. 5646
Docket No. PC-5669

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, 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 J. M. Miles, Shreveport Agency, that the Pullman Company violated Rules 36 and 38 of the Agreement between The Pullman Company and its Conductors, when:

1. Conductor D. W. King, Jr., a regularly assigned conductor of the Shreveport Agency, was assigned to extra work on Kansas City Southern Train No. 10, leaving Shreveport at approximately 7:00 A. M., January 13, 1951.

2. We now ask, because of this violation, that Conductor Miles who was available, willing and entitled to the assignment on the K. C. Sou. Train No. 10, be credited and paid for the trip made by Conductor King.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in the service of The Pullman Company, dated January 1, 1951; also, Memorandum of Understanding Concerning Compensation for Wage Loss found on page 85 of the Agreement. This Rules Agreement and Memorandum of Understanding will be considered a part of this Statement of Facts.

Various rules thereof, may be referred to herein from time to time without quoting in full.

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.

The essential facts necessary to a determination of this dispute are as follows:

On January 12, 1951, Conductor J. M. Miles, an extra conductor of the Shreveport Agency, was assigned to make a round trip between Shreveport, La., and Texarkana, Texas, on K. C. Sou. Train No. 16 outbound, and No. 9 inbound, designated as Pullman Line 3705. Reporting in Shreveport 4:20 P. M., January 12, released in Texarkana 7:45 P. M., same date. Report Texarkana 8:10 P. M. same date, released in Shreveport 10:40 P. M., same date. Total elapsed time from reporting time in Shreveport until released in Shreveport 6:20 hrs.

CONCLUSION

The facts of record support the position of Management in this dispute. The Company has shown that the Shreveport Agency, faced with the situation of having two assignments to be filled on January 13 with only one extra conductor available for service, handled those assignments in a thoroughly logical manner. Neither Rule 36 nor Rule 38, cited by the Organization, precluded the Company from handling the assignments in such manner. The Petitioner contends that Conductor Miles should have had the assignment on KCS train No. 10 and that the Company violated Rules 36 and 38 in giving that assignment to Conductor King. Management, however, has shown that the manner in which the Shreveport Agency handled its assignments did not deprive Miles of the assignment on KCS train No. 10 and that Miles could have had that assignment if he had wanted it. The claim of Conductor Miles is without merit and should be denied.

The Company affirms that all data submitted herewith in support of its position have heretofore been presented in substance to the employee or his representative and made a part of the question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The Order of Railway Conductors asks that the Pullman Company pay to J. M. Miles, an extra conductor, Shreveport Agency, for the trip made on 1-13-51 by D. W. King, Jr., a regularly assigned conductor, Shreveport Agency, on K. C. So. Train No. 10. The basis for the claim is that it was extra work and, under the parties' Agreement, should have been assigned to Miles, who was available.

The facts of this case are not in dispute. On 1-12-51, during the signout period which was from 1 to 3 P.M., extra conductor Miles of the Shreveport Agency was assigned to extra work on K. C. So. trains Nos. 16-9 on trip from Shreveport to Texarkana and return, reporting at 4:20 P.M., that day and returning at 10:25 P.M. on the same day, going off duty at 10:40 P.M. About 4 P.M. on 1-12-51 the company was advised of the need for a conductor on K. C. So. train No. 10 to Kansas City, Missouri, with reporting time of 6:20 A.M. on 1-13-51. This was extra work. Regularly assigned conductor King of the Shreveport Agency was assigned thereto. During the morning of 1-13-51 extra conductor Miles was assigned to extra work on Illinois Central trains Nos. 206-205, Shreveport to Meridian and return with reporting time of 12:20 P.M. on that day.

Rules of the parties' Agreement effective 1-1-51, insofar as here material, provide:

36. "A conductor operating in regular assignment shall not be used in service outside his assignment except in emergency * * *."

38 (a). "All extra work of a district, * * * shall be assigned to the extra conductors of that district when available, * * *."

Question and Answer 9, which explains what is meant by the word "available" as used in Rule 38 (a), states, insofar as here material, as follows:

"'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. However, an extra conductor who reports at his home terminal after the assignments have been made for the signout day * * * may displace a regularly assigned conductor * * *."

It is the responsibility of the company to comply with the rules of the Agreement and if it fails to do so, it becomes obligated under the provisions thereof.

When the company received information at about 4 P.M. on 1-12-51 that a conductor would be needed to perform extra work on K. C. So. train No. 10 to Kansas City, Missouri, on 1-13-51, it knew when extra conductor Miles would be back from the assignment he then had. Miles was scheduled to return on that day at 10:25 P.M. and go off duty at 10:40 P.M. Since the assignment of a conductor on K. C. So. train No. 10 called for a reporting time of 6:20 A.M., extra conductor Miles was available and therefore within the provisions of Rule 38 (a) of the parties' effective Agreement. Under this situation the company was obligated to assign him to this extra work since he was the only available extra conductor on the Shreveport Agency. In view thereof, no emergency existed at that time within the meaning of Rule 36.

The second part of the Answer to Question 9, insofar as it relates to regularly assigned conductors, does not have application until regularly assigned conductors are properly assigned within the company's authority to do so under Rule 36. Conditions did not here exist which, under Rule 36, gave the company such authority, for, as has already been stated herein, it was known to the company at the time it assigned conductor King to the extra work on K. C. So. train No. 10, that extra conductor Miles would be back in Shreveport and available therefore within the provisions of Rule 38 (a).

It is probably true that if extra conductor Miles had been assigned to the 6:20 A.M. assignment on 1-13-51 that an emergency would then have existed under Rule 36 as to the 12:20 P.M. assignment on Illinois Central trains 206-205 which would have authorized the company to have properly assigned it to conductor King, as Miles was the only available extra conductor on the Shreveport Agency. Then the second part of the Answer to Question 9 would have been applicable to any extra conductor reporting at his home terminal of Shreveport after the assignment. But that is not the situation which this docket presents.

As to the form of the claim made, the parties' "Memorandum of Understanding Concerning Compensation for Wage Loss" re-executed on 12-20-50, insofar as it relates to the question before us, provides "he shall be paid for the trip he lost in addition to all other earnings of the month." That is the nature of the claim as made.

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 company has violated the provisions of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of February, 1952.