

Award No. 5734

Docket No. PC-5673

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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. H. Edwards, Fort Worth District, that The Pullman Company violated Rule 38 of the Agreement between The Pullman Company and its Conductors, when:

1. Under date of November 29, 1950, Conductor Edwards was not given the assignment to which he was entitled, i.e., to report in Fort Worth, 10:30 P. M., to deadhead Fort Worth, Texas to Fort Hood, Texas on Santa Fe Train No. 5, to handle Main 7558 from Fort Hood to Camp Stoneman, California, and to deadhead Camp Stoneman to Oakland, California.
2. The above assignment was given to Conductor E. M. Thielman, Fort Worth District, in violation of Rule 38. We now ask that Conductor Edwards be compensated for the trip made by Conductor Thielman.

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 Effective January 1, 1948; also Memorandum of Understanding, subject "Compensation for Wage Loss" dated August 8, 1945, attached as Exhibit No. 1. 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. 2.

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

During the established signout period in the Fort Worth District on November 28, 1950, Conductor E. M. Thielman, whose total credited and assessed hours for the month of November, were 199:50 hours, was the first available unassigned extra Fort Worth District Conductor.

There was only one assignment to be made during the signout period on November 28. This assignment was for an extra service trip, Fort Worth to Waco, and return, outbound on MKT Train No. 25, reporting in Fort

November 29, 1950. In support of its claim the Organization points not to a violation of Rule 38 with respect to the assignment of Conductor Edwards but rather to the violation with respect to the assignment of Conductor Thieleman. On that violation the Organization rests its case. Its attempt to disregard completely the fact that the Company admits its violation of the Agreement with respect to the assignment of Conductor Thieleman and the fact that the Company has offered to pay the penalty prescribed for that violation.

The Organization would be justified in presenting a claim in behalf of Conductor Edwards only if it could show a second violation of the Agreement on November 29, 1950. That, however, it cannot show. If the violation of the Agreement with respect to Conductor Thieleman is disregarded as it properly should be, the Organization's case falls completely. Award 3831 of the Third Division supports the Company's position that the claim of Conductor Edwards should be considered on its own merits and not on the basis of a rule violation which is limited to another conductor. The claim in behalf of Conductor Edwards is without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made in behalf of Conductor J. H. Edwards by virtue of alleged violation of Rule 38 of the Agreement and Memorandum of Understanding (Compensation for Wage Loss) of August 8, 1945. It is claimed that Claimant was improperly denied assignment to deadhead Fort Worth, Texas to Fort Hood, Texas and handle Main 7558 from Fort Hood to Camp Stoneman, California, thence deadheading to Oakland, California, reporting time for said assignment being 10:30 P. M., November 29, 1950.

Rule 38 provides:

"(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, * * *."

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

"(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."

and Memorandum of Understanding concerning assignment of extra conductors provides:

"In the application of Paragraph C, Rule 38, Operation of Extra Conductors, of the Agreement effective September 1, 1945, between The Pullman Company and its Conductors, represented by the Order of Railway Conductors of America, it is understood that a regular signout period shall be established in each District, at which time assignments will be made for a succeeding 24-hour period. The signout period shall not be less than 30 minutes nor more than 4 hours in length."

"An extra conductor, operating under the Memorandum of Understanding of August 8th, 1945, * * * who files a claim for work to which he was entitled under the applicable rules of the Agree-

ment and which claim is sustained, shall be credited and paid for the hours involved in the lost assignment in the same manner as though he had performed the work."

During the signout period of November 28, 1950, Extra Conductor Thielemann was the first available unassigned conductor and as such was assigned to handle extra car Fort Worth to Waco, reporting time 9:15 P. M. This run was cancelled and Conductor Thielemann was properly credited and compensated therefor.

The record discloses that after the cancellation of the above run, Conductor Thielemann's signout slip and time sheet were not signed or handled, as ordinarily, by the night agent. Had this been done, his name would have been returned to the extra board, and by virtue of his then existing total credited hours, he would have been entitled to the next assignment.

This assignment was MKT Train No. 27, departing at 9:10 A. M., November 29, 1950.

Due to the failure of the extra board to reflect that Conductor Thielemann was next out, this assignment, that is, MKT Train No. 27, was given to and filled by Claimant.

Soon thereafter, it was discovered by the Carrier that the assignment board failed to reflect Conductor Thielemann's proper status upon which he, that is, Thielemann, was given the assignment for which claim is here made in behalf of Conductor Edwards.

The Organization asserts that Rule 38 (c) and the Memorandum of Understanding of August 8, 1945 clearly provide that conductors not given assignments to which they are entitled, shall, in addition to other earnings, be compensated in the amount he would have earned had the assignment been worked.

The Respondent takes the position that it was Conductor Thielemann who was "run-around" by Conductor Edwards and that the latter is not entitled to compensation under a literal interpretation of Rule 38 (c).

While it is admitted by the Respondent that Rule 38 (c) was violated insofar as Conductor Thielemann is concerned (for which payment was offered), it is contended that the allowance of the Edwards' claim would amount to the assessment of a second penalty.

It is uncontroverted that Conductor Thielemann was properly assigned to handle extra car attached to MKT Train No. 25, with departure time 9:15 P. M., November 28, 1950. It is likewise conclusive that when this run was cancelled, proper application of the Rules entitled Conductor Thielemann to the next assignment which, in this instance, was MKT Train No. 27, departure time 9:10 A. M., November 29, 1950.

The Carrier's act in failing to properly place Conductor Thielemann's name back upon the extra board after the cancellation of Train No. 25 resulted in his (Thielemann) being run-around by the Claimant. Claimant was at all times "second in line" behind Conductor Thielemann.

Any violation of the Rule must of necessity relate to the thing done.

This position of the Claimant on the extra board entitled him to an assignment only after Conductor Thielemann had received those assignments that his position on the extra board entitled him to.

Only then did applicable Rules give to the Claimant a vested right, or interest in and to subsequent assignments.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of April, 1952.