

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, 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 O. C. Glimp, San Antonio District, that The Pullman Company violated Rule 38 of the agreement between The Pullman Company and its Conductors, and Memorandum of Understanding Concerning Assignment of Extra Conductors, when:

1. Under date of September 26, 1950, during the regularly scheduled signout period from 10:00 A.M. to 12:00 noon, the Company representatives in the San Antonio District, failed to assign Conductor Glimp to a known extra service assignment on MK&T Train No. 8, reporting San Antonio 11:40 A.M., September 27, 1950.
2. We now ask that Conductor O. C. Glimp be compensated for the trip that he lost because of this violation, i.e., an extra road service trip San Antonio to Dallas.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in its service, effective September 1, 1945, revised effective January 1, 1948. Also a Memorandum of Understanding Concerning Assignment of Extra Conductors, effective Sept. 22, 1947 shown at pages 58-59 in the above mentioned Agreement.

This dispute has been progressed up to and including the highest officer of the Carrier designated for that purpose, whose letter denying the claim is attached as Exhibit No. 1.

There was an established signout period in the San Antonio District from 10:00 AM to 12:00 noon, each day. During this period, all assignments for the next 24-hour period were to be made. On September 26, 1950, it was known that there was an assignment for an extra conductor on MK&T Train No. 8 reporting San Antonio 11:40 AM, September 27, 1950.

Conductor O. C. Glimp was ready, willing and able to perform any work in the San Antonio District to which he was entitled. His record of earned and assessed hours on September 26, 1950, entitled him to the assignment on MK&T Train No. 8, September 27, 1950. The Company did not assign Conductor Glimp because they had information that an extra Dallas District Conductor, T. E. Talley, was expected to arrive San Antonio on MK&T Train No. 7, 5:45 PM, Sept. 26, 1950, which was 5:45 hours after close of the established signout period.

has information in its possession that a foreign district conductor will be available for the assignments in question. The Company submits that the procedure followed by the Company is logical, reasonable and just. The claim that Conductor Glimp should have been given the assignment on MKT train No. 8, reporting San Antonio 11:40 A. M., September 27, 1950, is without merit. The claim should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: There is in evidence an Agreement between The Pullman Company and its conductors in its service, effective September 1, 1945, revised effective January 1, 1948, also a Memorandum of Understanding concerning assignment of extra conductors, effective September 22, 1947.

The Memorandum of Understanding, among other things, provides for a regular sign-out period to be established in each district at which assignments will be made for the succeeding 24-hour period.

There was an established sign-out period in the San Antonio District from 10:00 A. M. to 12:00 noon each day. During this period all assignments for the next 24-hour period were to be made. During the sign-out period on September 26, 1950, it was known that an extra trip in road service would be operated on M-K-T. Train 8, September 27th, with reporting time 11:40 A. M. The claimant, Conductor O. C. Glimp, had met the requirements for this assignment and claims he was entitled to make the trip. The Company had information that an extra Dallas District conductor, T. E. Talley, was expected to arrive in San Antonio on M-K-T. Train 7 at 5:45 P. M., September 26, 1950, five hours and forty-five minutes after the close of the sign-out period. Extra District Conductor T. E. Talley, upon his arrival in San Antonio and released from service he was on, was assigned to the trip.

Rule 38 of the Agreement reads in part as follows:

"OPERATIONS OF EXTRA CONDUCTORS.

"(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, except as provided in paragraph (e).

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

"It is understood that the management has the right to annual an extra conductor's assignment when the cars in his charge are consolidated with cars of another train or trains, or when a foreign district conductor is available for service as provided in paragraph (e) of this rule. Also in the event the destination of the train is changed en route, the conductor will continue to the new 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."

"(e) This rule shall not operate to prohibit the use of a foreign district conductor out of a station in service moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station."

The contention of the Employees is that the Memorandum of Understanding requires the assignment of all extra work, which it is known will arise within the next succeeding twenty-four hours, during the established sign-out period, to extra conductors who are available at the terminal during that sign-out period; that since foreign district Conductor Talley was not available at San Antonio during the sign-out period on September 26, 1950, the Carrier was in violation of Rule 38 and the Memorandum of Understanding in not assigning the extra trip to the available extra San Antonio District Conductor (Glimp) entitled to the assignment; and that as a result of this violation it must now pay Claimant for the trip he lost.

The Carrier's position is that it properly assigned Conductor Talley under the provisions of Rule 38 and the Memorandum of Understanding concerning assignment of extra conductors, since the assignment was to service moving on a direct route toward Conductor Talley's home station, and Conductor Talley was scheduled to arrive in San Antonio sufficiently in advance of the reporting time of the assignment.

The question is whether or not the Carrier, under the provisions of Rule 38 and the Memorandum of Understanding, has the right to withhold assignment of known extra service during a regularly established sign-out period, when it has information that later a foreign district conductor will arrive and be available for such service.

Under Rule 38(b) the Carrier has the right to annual an extra conductor's assignment when a foreign district conductor is available for service.

Under Rule 38(e) the use of a foreign district conductor out of a station in service moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station is permissible. The Carrier's rights in such respect are not denied.

This brings us to what is meant by the word "available" (emphasis supplied) and its application to Rule 38 and the Memorandum of Understanding heretofore cited. Available means "accessible."

In Award 4659 the word available is discussed in connection with (b) and (e) of Rule 38. We quote from the award: "What does available mean in this connection? Does it mean the conductor referred to in the example was available in Chicago for assignment to St. Louis at some future time while he was still in St. Louis before he arrived in Chicago or even before he made his trip? Is this really what is meant as applied in the instant case to an extra conductor by 'use of a foreign district conductor out of a station in service moving in a direct route toward his home station?' We do not think so.

The foregoing language is applicable here. Conductor Talley was not available in San Antonio during the sign-out period and could not be available for service prior to his arrival in San Antonio and until he was released from the service he was on. True, when he did become available for service at San Antonio the Carrier could have annulled extra Conductor Glimp's assignment had he been assigned to duty during the established sign-out period in San Antonio and assigned Conductor Talley to service the trip under Rule 38(e) thereof. The applicable rules and the Memorandum of Understanding grant no authority to the Carrier to withhold the assignment as it did in the instant case.

As stated in Award 4659, supra: "Confining ourselves to any analysis of the applicable rules and the Memorandum of Understanding and the record, we conclude authority does not exist for short circuiting the assignment and sign-out rights appropriately belonging by the Agreement and the Memorandum of Understanding to the New York District as was done here." (In the instant case the San Antonio District.)

The evidence shows that Carrier has on two occasions paid claims for similar violations. The Carrier therefore knew the proper application of the rule and Memorandum of Understanding. See Awards 3832 and 4281.

The Carrier contends that it has been the practice on its system as far back as thirty or forty years to withhold assignments when it is known that a foreign district conductor will arrive in time to fill the assignment. In support of this contention, as shown by Exhibit "H" in the record, there are statements from fifty superintendents and agents of the Carrier as to the practice and the length thereof. The contention of the Carrier that a long established practice prevails cannot be sustained.

The provisions of the Agreement and the Memorandum of Understanding supersede a practice incompatible therewith. It does not change unambiguous provisions of the Agreement or Memorandum of Understanding. It does, under certain circumstances, affect the rights to claim retroactively benefits which have been waived by positive conduct. See Awards 3979, 3803, 3976 and 2135.

For the reasons given in this opinion, the claim should be sustained.

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 claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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