

Award No. 6093
Docket No. PC-6158

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, 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 H. A. Simmerman, Jr., Philadelphia District, that The Pullman Company violated Rule 38 of the Agreement between The Pullman Company and its Conductors, when:

1. On February 7, 1951, Conductor C. P. Carr of the Philadelphia District, was assigned to service from Washington to New York, and
2. We now ask that Conductor H. A. Simmerman, Jr., also of the Philadelphia District, be credited and paid for a trip, Philadelphia to New York, with a minimum credit and pay of 7:00 hours.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in its service effective January 1, 1951. This Rules Agreement will be considered a part of this Statement of Facts. Rule 38 has been violated.

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.

Under date of February 6, 1951, Conductor C. P. Carr of the Philadelphia District was a foreign district conductor in the Miami, Florida District. Because there were no available extra conductors of the Miami District, Conductor Carr, under the terms of Rule 38 (b), was furnished an assignment to Duty Slip reading as follows:

"Miami District, Conductor C. P. Carr, Philadelphia District, report at Florida East Coast Station 8:30 A.M., depart 9:15 A.M., February 6, 1951, to perform the following service:

"Florida East Coast No. 88, Florida Special. The destination of this trip is Washington, D. C. W. L. Zimpelmann, District Superintendent."

Conductor Carr followed instructions contained in the above Assignment to Duty Slip and completed the trip Miami to Washington on the Florida

to applies if a conductor was assigned from Philadelphia to Chicago, and was changed enroute to go to St. Louis. He could go on to St. Louis. That is what I think that applies to and I don't believe it would apply to Conductor Carr in this case because he was assigned at Miami and succeeded in getting to Washington before there was any change in the operation of his train. Then Washington re-assigned him. There was evidence of that. Mr. Laux met him and told him to go to New York. There is where our claim begins."

Management submits that the Organization's contention is based upon an improper reading of Rule 38 (b). In essence the Organization contends that Management is privileged under Rule 38 (b) to change an extra conductor's assignment only while he is en route. Since Carr had arrived at his original destination, the Organization argues, the change of destination to New York City was not a change of destination while the conductor was en route. This position is clearly contrary to Rule 38 (b). The Rule provides for a change in the destination of a conductor's assignment when the destination of the train, rather than the destination of the conductor, is changed en route. Thus, inasmuch as the destination of train No. 88 was changed while the train was en route, the mere fact that Conductor Carr had arrived at the destination of the assignment given him at Miami on February 6 did not preclude Management from extending his assignment.

The claim involving the assignment of Philadelphia District Conductor R. H. Shaughnessy from Pittsburgh to Perrysville on August 2, 1946, cited by the Organization's representative at page 7 of Exhibit A, is not in point. In that claim Pittsburgh District extra conductors were available in Pittsburgh on August 2, 1946, when Conductor Shaughnessy was assigned. Thus, the assignment of Conductor Shaughnessy was not an emergency assignment. Management, therefore, was privileged under Rules 38 (a) and (e) to withhold the work in question from Pittsburgh District extra conductors only insofar as that work could be used to return Philadelphia District Conductor Shaughnessy to Philadelphia in service moving on a direct route toward his home station. Further, no question of a change in the destination of Conductor Shaughnessy's train was involved. Clearly, the claim in connection with the operation of Conductor Shaughnessy is not factually similar to the instant dispute. Therefore, it has no precedent value as far as the claim in behalf of Conductor Simmermon is concerned.

In view of these facts Management submits that the Organization's contention is without merit and that the claim in behalf of Conductor Simmermon should be denied.

All data presented herewith and in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Rule 38 governs the operation of extra conductors and provides in part:

"(a) All extra work of a district * * * shall be assigned to the extra conductors of that district when available, except as provided in paragraphs (d) and (e)."

(Paragraph (d) is not involved here)

"(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."

It is obvious that paragraph (e) permits the company to use foreign district conductors for the service specified even though extra conductors of the district are available, but it does not restrict the use of foreign district conductors to the service specified if no extra conductors of the district are available. Question and Answer 7 under that paragraph confirms that view.

Thus paragraph (e) was not applicable to the assignment of Conductor Carr to service in Miami. He was assigned to operate to Washington. While en route the destination of his train was changed to New York and upon arrival in Washington he was so advised and instructed to continue in service to New York. That action was proper under Rule 38 (b) which provides in part:

"It is understood that Management has the right to change an extra conductor's assignment when the destination of his train is changed en route, in which event the conductor will continue to the new destination."

The contention that the conductor's assignment must be changed en route is without merit as the rule refers only to a change in the destination of the train en route. Hence the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.

DISSENT TO AWARD 6093 DOCKET PC 6158

The majority are in error in this Award for the simple reason that there is no provision in Rule 38 or any other rule of the Agreement, which permits the assignment of a Conductor at a foreign terminal through his home terminal.

The purpose of the exception provided in paragraph (e) is to permit Management to return a Conductor to his home terminal in service in a

direct route when extra local Conductors are available, or in an indirect route when no extra local Conductors are available, and the Carrier has so recognized and paid identical claims.

Thus the Award has the effect of modifying the provisions of Rule 38, which is beyond the authority of the Board.

/s/ R. SARCHET

/s/

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