Award No. 6430
Docket No. PC-6281

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, 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. L. Williams, temporarily transferred to the St. Paul District from the St. Louis District, that:

1. Rule 38 (c) of the Agreement between the Pullman Company and its Conductors (effective Sept. 1, 1948) was violated by the Company on Oct. 16, 1950, when the Company failed to assign Conductor Williams as second conductor on NP Train No. 1, St. Paul, Minnesota, to Billings, Montana, returning deadhead to St. Paul on NP Train No. 2, and instead assigned Conductor J. J. Boeger.

2. Conductor Williams be compensated under the applicable rules of the Agreement for the time made by Conductor Boeger on this trip.

I.

EMPLOYES' STATEMENT OF FACTS:

Records maintained by the Yardmasters or other employes operating in the tower at St. Paul show that the North Coast Limited (CB&Q Train 51) pulled past the tower into the platform sheds of the St. Paul Depot at precisely 8:00 A. M. on Oct. 16, 1950. (See Ex. #1, letter from I. G. Roskraft, Local Chairman Div. 731, to A. G. Wise, General Chairman, dated April 1, 1951.)

The normal consist of the North Coast Limited included five regular Pullman Cars. (See Ex. #2, Minutes of Hearing accorded Conductor H. L. Williams, St. Paul, Feb. 15, 1951, p. 9)

The St. Paul Pullman District office had been informed prior to its arrival at St. Paul on Oct. 16, that three extra Pullman cars would be included in the consist of the North Coast Ltd. (See Exhibit #2, p. 11)

The St. Paul Pullman District office had been informed on the afternoon of Oct. 15 that a fourth extra Pullman car would be attached to the North Coast Limited at St. Paul on Oct. 16. (See Exhibit #2, p. 10)

L. J. Bartholomew, District Superintendent, The Pullman Company, St. Paul, inspected the North Coast Limited subsequent to its arrival at the platform (after passing the tower at precisely 8:00 A. M.). He observed that in addition to the previously anticipated nine Pullman cars a tenth Pullman car had also been included in the consist of the North Coast Limited. (See Ex. #2, p. 9)

Conductor Boeger's statement as to the time at which he was called, which statement was made approximately six weeks after the occurrence, the Daily Office Record of Extra Conductors of the St. Paul District for October 16, 1950, copy of which is attached as Exhibit I, bears the notation that Conductor Boeger was given the assignment to NP train No. 1 at 8:05 A. M., October 16.

The only other information submitted by the Organization in support of its claim in behalf of Conductor Williams is a statement by Local Chairman Roskaft appearing at page 4 of Exhibit A to the effect that Conductor Williams claims that he was in the office at the time the call to Boeger was made and that he had already been released from service. Further, at page 7 of Exhibit A, Local Chairman Roskaft stated that a hotel clerk at the Claude Hotel, at which Conductor Boeger resided, thought that a call had been made to a conductor in October between 8:20 and 8:30, "the closest he could recall," and that the conductor left the hotel in a hurry. Certainly, these unsupported and indefinite statements are not substantial evidence such as that which should be considered by the Third Division in determining the merits of this claim.

CONCLUSION

The Organization has failed to sustain the burden of proving a rule violation in this dispute. The only probative evidence presented in support of the claim in behalf of Conductor Williams is the statement of Conductor Boeger, which statement is contradicted by the testimony of District Superintendent Bartholomew and Assistant District Superintendent Maguire as well as the Daily Office Record of Extra Conductors prepared by the St. Paul District for the purpose of maintaining a record of assignments made to extra conductors. Since the Organization has failed to show a rule violation, its claim in behalf of Conductor Williams is without merit and should be denied.

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

(Exhibits not reproduced)

OPINION OF BOARD: The Organization contends the Company violated Rule 38 (c) of the current Agreement between the parties, when on October 16, 1950, it failed to assign Claimant as second Conductor on NP Train No. 1, St. Paul to Billings, Montana, and return deadhead to St. Paul, but did assign Conductor J. J. Boeger in his stead, and requests that Claimant be paid for the time involved that Conductor Boeger made the trip.

The Company denies any violation of the rules of the Agreement, and contends that at the time Conductor Boeger was given the assignment, the Claimant had not been released from his incoming assignment, therefore, was not entitled to the assignment as alleged.

Briefly stated, it is agreed,that Claimant was released from his incoming assignment as of October 16, 1950, at 8:15 a. m. That on the same date it was determined by the Company that a second conductor would be required to be assigned to North Coast Limited, St. Paul to Billings, Montana, leaving St. Paul at 9:00 a. m., and that the Company called Conductor Jenson, who was entitled to the assignment, but failed to accept it.

From this point on there is a fide variance of facts, and the question arises as to whether or not the Claimant was properly the next Conductor to be called, or was Boeger entitled to the assignment.

From the record as presented to us we note there are inconsistencies and conflicts in the testimony and exhibits before us, and we must hold, as in many previous Awards, it is not the function of this Board to pass upon the

credibility of witnesses nor to weigh the evidence. Therefore, there being no showing of malice toward the Claimant, nor a capricious act on the part of the Company, we must deny the claim as presented. See Awards 3036, 2798, 4252, 6231.

The record has too many conflicts and inconsistencies, as between the parties, for this Board to sustain the claim, and there being reasonable evidence to support the contention of the Company, the claim based on the record, does not merit a sustaining Award, and does not sustain the allegation that the Company violated the Agreement.

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

That both parties to this dispute waived oral hearing thereon;

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 record as presented, does not justify a sustaining Award.

AWARD

Claim denied for reasons above stated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 3rd day of December, 1953.