

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, 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. O. Freet, Kansas City District, that:

1. Rule 38 of the Agreement between the Company and the Conductors was violated by the Company on June 19, 1952, when the Company assigned Conductor L. D. Brooks, Kansas City District, to service on MK Train No. 25, reporting time 7:55 A. M. on June 20, 1952.

2. Conductor H. O. Freet be credited and paid under applicable rules for this assignment to MK Train No. 25.

EMPLOYES' STATEMENT OF FACTS: I. On June 19, 1952, at the close of the signout period at Kansas City all extra Conductors known to be available had received assignments.

At 4:50 P. M. (subsequent to the close of the signout period) a need arose to assign a Pullman Conductor to MK Train No. 25. This assignment had a reporting time of 7:55 A. M. the following day.

At 9:50 P. M. Conductors C. E. Bullock and L. D. Brooks, both Kansas City District, were released in Kansas City from assignments completed just previously.

Credited and assessed hours for these two Conductors were as follows: Bullock, 188:55 hours, and Brooks, 166:40 hours.

Conductor Brooks was assigned to operate on MK Train No. 25, with reporting time the following morning as detailed above. This assignment was made at approximately 10:00 P. M., 10 hours before scheduled reporting time of the assignment on MK Train No. 25.

II

Conductor Freet arrived and was released at Kansas City at 11:00 P. M., June 19, 1952.

Conductor Freet's credited and assessed hours totalled 166:00.

Conductor Freet was not given the assignment on MK Train No. 25 but instead this assignment was performed by Conductor Brooks.

CONCLUSION

In this submission, the Company has shown that Rule 38 is silent with regard to the procedure to be followed in the assignment of extra conductors to emergency requirements. Since the Rule does not require Management to make an emergency assignment at any specific time, there can be no rule violation if Management does not delay in making the assignment until a "reasonable time" before the reporting time of the assignment.

In view of these facts, the Company submits that the instant claim is without merit and should be denied.

All data submitted 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: The facts in this case are not in dispute. The signout period at Kansas City, established in accordance with Rule 38 (c), is from 1:00 P. M. to 2:00 P. M., during which time the Carrier is to assign all extra service which is known to exist and will arise within the succeeding twenty-four hour period to available extra Conductors of that district.

At about 4:50 P. M. on June 19, 1952, after the close of the signout period that day, Carrier was advised that an extra Pullman car would be operated on M-K-T train No. 25 on June 20 from Kansas City to San Antonio. This created a Pullman car assignment with reporting time at 7:55 A. M.

At 9:50 P. M., June 19, extra Conductors Bullock and Brooks arrived at Kansas City, were released and declared themselves available for service. Conductor Brooks had the least time on record for assignment as between these two conductors and was given the assignment. However, at 11:00 P. M. Claimant Freet arrived at Kansas City and was released from duty and reported himself available for work upon arrival.

This claim arises as he had less hours than Conductor Brooks and it is contended he was entitled to the assignment at 7:55 A. M., June 20.

Petitioner contends that when need of an extra Conductor arises after the close of the regular sign-out period, Rule 38 requires that Carrier withhold the assignment until a reasonable time prior to reporting time and then assign it to the available extra Conductor with the least number of credited and assessed hours at the time.

Respondent Carrier views the issue as to whether or not it is proper to make assignments as promptly after the same arise when the need therefor arises after the close of the daily sign-out period. Also, that Rule 38 is silent on this question and Carrier has not contracted away the right to make such an assignment at any time.

In view of the provisions of Rule 38 (c) we believe this claim should be sustained. We do not construe Rule 38 (c) as being a first-in first-out rule or that it should be considered in that light. It does provide for assignment to the Conductor who has the least number of credited and assessed hours and who is available for the assignment. Undoubtedly, emergency situations could arise in which there would not be sufficient time to advise the Conductor entitled to such appointment and, therefore, the rule must be interpreted on the particular facts in each situation on the basis of what is a reasonable time in any given situation. Under the facts presented in this record, nearly nine hours would elapse between the time claimant reported himself as available at the point where the new assignment was to start and we cannot consider that any emergency situation existed under these facts, and giving a reasonable interpretation to the provisions of Rule 38 (c) is to sustain the claims as made. See Award 5646.

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

Claims sustained in accordance with Opinion.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.