

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, 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 F. Daley, Penn Terminal District, that:

1. Rule 39 of the Agreement between the Company and its Conductors was violated by the Company on December 4, 1952, when the Company temporarily transferred Conductor W. Francis, Portland District, to the Penn Terminal District.

2. Rule 38 of the same Agreement was violated by the Company on December 4, 1952, when the Company assigned Conductor Francis to road service on PRR Train No. 71-38, New York, N. Y. to Akron, Ohio, and return.

3. Conductor Daley, Penn Terminal District, be credited and paid for the trip New York to Akron and return improperly assigned to Conductor Francis.

EMPLOYEES' STATEMENT OF FACTS: I. The pertinent provisions of Rule 39 regulate the number of Conductors on the Extra Board, as follows:

"The intention under this Rule is to allow conductors working on the extra board an opportunity to average as nearly as possible full time before additional conductors are recalled from furlough obtained by transfer, or employed."

"It is not the intention to restrict the earnings of extra conductors to three-fourths time by maintaining an unnecessarily large number of conductors on the extra board."

"Q-3. When several conductors are to be transferred into a district for seasonal work, shall all of the conductors be transferred at one time or as needed?"

"A-3. As needed."

The pertinent provisions of Rule 38, Operation of Extra Conductors, are as follows:

"(a) All extra work of a district, including work arising at points where no seniority roster is maintained but which points are

OPINION OF BOARD: The facts of this case are not in dispute. The Carrier says that in November, 1952, it saw need for 26 additional conductors at its Pennsylvania Terminal during the month of December on account of the requirements of its winter service. It was anticipated that three of these additional conductors would be needed about December 1 and the others during that month. On November 30, 1952, Conductor Francis, being then on furlough at the Portland District, was recalled and ordered to transfer to Pennsylvania Terminal, which he did on the morning of December 4. His name was placed seventh on the extra board and, in due course, he was assigned at 11:31 A. M. on that day to a run from New York to Akron and return, reporting at 7:25 P. M.

The Employees say that the transfer of Francis from Portland to Pennsylvania Terminal and his subsequent assignment to the New York-Akron run was in violation of Rule 39 of the current Agreement. The claim is predicated on the fact that said Rule provides that, "The intention under this Rule is to allow conductors working on the extra board an opportunity to average as nearly as possible full time before additional conductors are recalled from furlough, obtained by transfer, or employed." It is shown that during the month of November conductors on the extra board at Pennsylvania Terminal had averaged but 85 percent of full time, and that for the first three days of December their average was less than 65 percent. The Claim is on behalf of Conductor F. Daley and it is asserted that if Francis had not been transferred from Portland and assigned to the New York-Akron run on December 4, Daley would have been called. The record discloses, however, that during December Daley was credited with 260 hours and 55 minutes, although 210 hours would have constituted a basic month's service for him.

The Organization attempts to establish that the transfer of Francis from Portland was unwarranted because the extra conductors at Pennsylvania Terminal had not, during November and the first three days of December, worked to the extent of their normal availability. If the transfer had been ordered under normal conditions, so that future needs could reasonably have been determined from past experience, there would be merit in the Organization's contention. However, we cannot lose sight of the fact that it has been asserted by the Carrier that its anticipated need for extra conductors at Pennsylvania Terminal in December was predicated upon a scheduled increase in the requirements of its winter service.

The quoted provision of Rule 39 imposes on the Carrier the obligation to exercise good faith not to unduly augment its extra board by recall from furlough or transfer, while those already on that board are not, on the average, enjoying full time employment. On the other hand, the Carrier is not required to anticipate its future needs exclusively on the basis of its immediate past experience, when it is evident from other factors that the requirements of the service cannot be met without a substantial increase of available personnel.

In view of the showing made by the Carrier we are of the opinion that the Organization has not discharged the burden resting on it to establish a violation of 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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.