

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, 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 A. W. Whaler, Philadelphia District, that:

1. Rule 39 of the Agreement between The Pullman Company and its Conductors was violated by the Company on April 13, 1952, when the Company employed T. J. McCurry, Jr. as an Extra Conductor in the Philadelphia District.

2. Rule 38 of the same Agreement was violated on April 26, 1952, when T. J. McCurry, Jr. was given an assignment for a service trip on PRR Trains Nos. 186 and 187, Philadelphia to Boston and return.

3. Extra Conductor A. W. Whaler be credited and paid for this trip.

EMPLOYEES' STATEMENT OF FACTS: I During the month of February, 1952, the average basic monthly wage of the Conductors on the Extra Board, Philadelphia District, was \$345.39. During this same month the average monthly earnings of these same Conductors was \$383.97, or 111.2% of their average basic monthly wage. These facts were or should have been reported by the Company on March 15, 1952, as required by Rule 39.

During the month of March, 1952, the average basic monthly wage of the Conductors on the Extra Board, Philadelphia District, was \$344.98. During this same month the average monthly earnings of these same Conductors was \$343.86, or 99.7% of their average basic monthly wage. These facts were known to or could readily have been ascertained by the Company on April 13, 1952, and furthermore were or should have been reported on April 15, 1952, as required by Rule 39.

During the month of April, 1952, the average basic monthly wage of the Conductors on the Extra Board, Philadelphia District, was \$347.12. During this same month the average monthly earnings of these same Conductors was \$286.85, or 82.6% of their average basic monthly wage. On the 13th of April the recorded credited hours of the Philadelphia Extra Conductors indicated that their average earnings for the month of April would be considerably under 100% of their average basic monthly wage. On the 26th of April the recorded credited hours of these same Conductors gave an indication approaching the point of certainty that their average earnings for the month would be considerably under 100% of their average basic monthly wage.

OPINION OF BOARD: Petitioner states: "The dispute between the parties concerning Rule 38 hinges solely on the question as to whether or not T. J. McCurry was properly employed by the Company. As stated above, your petitioner contends that his employment was in violation of Rule 39. If this is the case then his assignment to road service on April 26, 1952, constitutes a violation of Rule 38. If, on the contrary, there was no violation of Rule 39, it would follow that there has been no violation of Rule 38. * * *

From the above it becomes immediately apparent that our task here is to determine whether there was a violation of Rule 39. That part of Rule 39 which the Organization contends was violated in the instant case reads 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." (Emphasis ours).

The Organization admits that "The intent of Rule 39 is clearly stated, namely, to refrain from adding additional extra conductors to the extra board until the extra conductors already employed are earning approximately an average of a full month's average basic wage."

In its original submission the Organization seems to argue that the intention under this rule is to allow conductors working on the extra board an opportunity to average over 100% of their basic monthly rate before employing additional conductors, ignoring the qualifying phrase "as nearly as possible."

Rule 39 also provides "On the 15th day of each month the earnings (dollars and cents) of conductors working on the extra board during the preceding month shall be averaged." This was done here and the average for March was 99.7 of their monthly basic pay.

The Organization further contends that the Carrier, in view of the average being based on the preceding month, cannot anticipate requirement as to need of additional conductors and that since McCurry was employed on April 13 the rule was violated.

However, at the hearing when the local chairman was asked "Does Rule 39 of (or) any other rule in the Agreement prohibit Management from hiring additional conductors when, in their judgment, they are needed?" and he replied "No" but added in this case "it was founded on a mighty faulty idea."

If the local chairman had in mind that Carrier could not anticipate on April 13 what he records would show for March on April 15 it is safe to say that the figures for March (99.7) were known by the Carrier on the 13th.

That the local chairman thought that the Management's idea was faulty is no evidence that a rule was violated.

Since we are satisfied that the Carrier did not violate Rule 39, it follows on the Organization's own premise that Rule 38 was not violated—hence we give no further consideration to that.

We conclude that the Carrier did not violate the Agreement and the claim must be denied. See Award 6633 involving same parties and rule.

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 Company 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 25th day of May, 1954.