

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. E. Henley, Memphis District but temporarily transferred to the Omaha District prior to July 15, 1952 and following July 25, 1952, that:

1. Rule 39 of the Agreement between The Pullman Company and its Conductors was violated by the Company on July 15, 1952, when the Company improperly recalled Conductor Henley from temporary transfer to the Omaha District. Rules 25, 40 and 42 are also involved.

2. Conductor Henley be credited and paid for each trip that was due him in the Omaha District under the applicable rules of the Agreement during the period July 16 to July 25, 1952 inclusive, because of such improper recall to the Memphis District.

EMPLOYEES' STATEMENT OF FACTS: I. Conductor A. E. Henley held seniority in the Memphis District dating from July 8, 1945, under Rule 25 of the Agreement which reads as follows:—

"... Basic Seniority Date. The seniority of a conductor, which is understood in this Agreement to mean his years of continuous service from the date last employed, shall be confined to the district where his name appears on the seniority roster."

No deductions shall be made from the seniority of conductors for time spent on authorized leaves of absence, furloughs or sickness."

Conductor J. C. Bianchi held seniority in the Memphis District dating from April 22, 1944, under this same Rule 25.

On April 23, 1952, Conductor Henley was temporarily transferred to the Omaha District under the provisions of Rule 42 which reads as follows:

"**RULE 42. Temporary Transfers.** When conductors are transferred to other districts to work on seasonal runs or other temporary assignments, they shall retain their seniority in the district from which transferred and shall rank as junior to all conductors in the district to which transferred. They shall not accumulate seniority in

The Company affirms that all data submitted herewith and 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: This is a claim presented for and on behalf of Memphis District Pullman Conductor A. E. Henley, for loss of earnings during the period July 16-25, 1952, due to alleged improper recall from the Omaha District where he was employed under a temporary transfer.

Before taking up the merits of the claim we take note of the Carrier's point that this is not the same case as was presented on the property in that there it was handled as "an unjust treatment" case, and it was not until that matter was heard and decided against him that he alleged violation of a specific rule. However, in view of the fact that the record discloses a set of circumstances on which a violation of a rule can be predicated and the Carrier attempts to meet that issue, no prejudice results to the Carrier. See Awards 2828, 3256, 5505 and 5760.

Henley, hereinafter referred to as Claimant, relies particularly on the following language in Rule 39: "**The junior employe who is on temporary transfer will be shown as furloughed at his home station but working on temporary transfer in another district. He must in all cases be notified in writing of his furlough in his home district. Such notice should, however, advise him that he may continue at work on temporary transfer until subsequently displaced or until his services are no longer required at that point.**" * * * (Organization's Emphasis).

It may be conceded that Claimant was not displaced, nor was he advised that his services at Omaha were no longer required.

Opposed to this the Carrier relies on "the second sentence of first paragraph of Rule 39" reading — "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.", and Question and Answer 2 in Rule 42 reading respectively as follows:

"Q-2. Shall a conductor be given a temporary transfer or allowed to remain on a temporary transfer when it is necessary to employ or bring conductors into his home district on a temporary transfer to protect the work in his home district?

"A-2. No."

(Claimant admits being on temporary transfer under Rule 42).

So the question arises, was it necessary to bring Henley home to protect the work in his home district? He says "No", because there was a senior Conductor, Bianchi, on the Memphis District that was not recalled. Carrier says Bianchi was on furlough and waived his call, and that the only other available man died. Henley says that he was told by Assistant Superintendent Schroyer that — "I forgot all about Mr. Bianchi." Whether this last statement is true or false, the fact remains that Carrier admits there was no exchange of correspondence between it and Bianchi, and at the same time seems to take advantage of the fact that Henley was not "notified in writing of his furlough in his home district" because he was told when he got back to Memphis that he was not on furlough.

The burden is on Claimant to establish his claim. He has shown there was not a compliance with that portion of Rule 39 he relies on. The burden is on the Carrier to show the need for his recall to Memphis. It gets no support from that portion of its quote from Rule 39, supra, which it relies on, because when Claimant got back to Memphis he was advised he was not on

furlough, and it hardly seems fair to tie the statement that he made in Cleveland two years ago, "that if they had to have a man they should call be back home", when in the very next breath he said — "This year it is a different story", and well he might, because he had only been in Memphis a short time when he was furloughed and his earnings suffered severely. Superintendent Haskett was rightfully apologetic about this when he said — "I would like to state at this time that it is mighty hard to determine just how much work there is going to be in a given district in the immediate future. Now I think it is evident from Mr. Williams' letter that they sincerely believed that there would be sufficient work for Mr. Henley in the Memphis District at the time they had him returned from temporary transfer. The fact that the work didn't pan out is something that could not have been avoided, and I presume that Mr. Henley would have been very well satisfied with being returned to Memphis had he received a normal amount of work. Isn't that right, Mr. Henley?"

That is when Claimant referred to what took place in Cleveland and added — "This year it was a different story."

Paraphrasing slightly what we said in Award 5492, — "Under these circumstances, we cannot consider this case in the light of an emergency. Carrier alone is responsible for its operational arrangements and it is not our prerogative nor intention to suggest how it should conduct its business. It is within our province to observe, however, that under methods followed at the time of this incident furloughed conductors were available in Memphis (since Carrier chose to rely on oral conversations with Bianchi) and Kansas City (if Carrier had extended the same courtesy to Claimant that it says it did to Bianchi and gave him a choice of staying in Omaha or returning to Memphis) if needed."

While the case has not been without some difficulty, we think the claim should be sustained.

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1954.