

Award No. 6748
Docket No. PC-6827

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, 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 R. E. Walburg, Buffalo District, that The Pullman Company violated Rule 38(e) of the Agreement between The Pullman Company and its Conductors, when:

1. Under date of January 27, 1953, Conductor C. E. Wood, Buffalo District, was assigned from Chicago to Boston through Buffalo.
2. We now ask that Conductor Walburg be credited and paid for the trip, Buffalo to Boston, performed by Conductor Wood.

EMPLOYEES STATEMENT OF FACTS:

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There is in evidence an Agreement between The Pullman Company and Conductors in its service, effective January 1, 1951. Various rules thereof will be referred to therein, without quoting in full.

On January 26, 1953, Conductor H. E. Wood, Boston District, was a regularly assigned Conductor to B&A-NYC trains #27 and #28 between Boston, Mass., and Chicago, Illinois. Conductor H. E. Wood was taken ill and relieved from his assignment on train #27 at Albany. The train operated Albany to Buffalo without a Pullman Conductor and on arrival at the latter station Extra Conductor C. E. Wood of the Buffalo District was assigned to train #27 for the balance of the one-way trip, Buffalo to Chicago.

For the portion of the trip Buffalo to Chicago, Conductor C. E. Wood was due to be credited for such services as provided in Rule 6 and paid for such services under the provisions of Rule 21 which reads in part as follows:

"Less than a round trip shall be paid for proportionately."

After release in Chicago on the morning of January 27, 1953, Extra Conductor C. E. Wood, Buffalo District, was a foreign district Conductor in the Chicago Central District. He had no established layover and could be held as provided in Rule 9(b) which reads in part as follows:

"A conductor in **incompleted regular service** . . . held at a point other than his home terminal, may be held 14 hours without credit

form are assigned on the round trip basis. Further, the Company has shown that if Management had annulled the assignment of Buffalo extra Conductor Wood at Buffalo, it would have violated the provisions of Rule 38 of the Agreement. Also, the Company has shown that **Rule 21. Regular Assignments—Part Time** provides that conductors working part time in regular assignments will be paid for a round trip the number of days there are conductors in the run as covered by bulletined schedule and less than a round trip will be paid for proportionately. Finally, the Company has shown that there was no violation of Rule 38, paragraph (e), in that upon his arrival in Chicago Conductor Wood had not completed his assignment in regular service and was not a foreign district conductor for the purposes of Rule 38 (e). The Organization's claim that extra Conductor Walburg of the Buffalo District should be credited and paid for the trip Buffalo-Boston is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employee or his representative and made a part of this dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Except on one point, to be presently mentioned and discussed, the facts of this case are not in dispute and can be stated in summarized form.

On January 26, 1953, Boston District Conductor H. E. Wood, who held regular assignment in Line 5227 operating on B&A-NYC Trains 27 and 28 Boston to Chicago and return, became ill while enroute on Train 27 to Chicago and was released from duty at Albany, New York. Upon arrival of the train at Buffalo on the morning of January 27th Extra Conductor C. E. Wood of the Buffalo District took H. E. Wood's position and handled the cars in Train 27 to Chicago, where he arrived shortly before 8:45 A.M. on January 27th. The same day he was used by the Carrier to fill the continuing temporary vacancy in the position of H. E. Wood, Line 5227 on Train 28, Chicago to Boston, through Buffalo, reporting time in Chicago 1:30 P.M. He completed that trip and has been compensated therefor. Subsequently, the Claimant, R. E. Walburg, an extra conductor in the Buffalo District, filed the instant claim, basing his right of recovery on the premise that under the Agreement he had the right to work the H. E. Wood conductor position on Train 28, Buffalo to Boston.

There is serious dispute between the parties as to the question of how Extra Conductor C. E. Wood was assigned to service by the Carrier at Buffalo or, stated in different form: what assignment was given to such conductor by that Division on the morning of January 27th? As to this point the Employees assert the Buffalo District assigned him, Buffalo to Chicago, to protect H. E. Wood's run on Train 27 while the Carrier insists he was assigned to fill such conductor's position on both Train 27 and Train 28 in Line 5227, Buffalo to Chicago, and Chicago, through Buffalo, to Boston. In this connection it can be stated the answer to the foregoing factual question, if it can be reached from the evidence of record, is of primary importance and must be first determined for if the Employees' position with respect thereto is correct, Conductor C. E. Wood upon reaching Chicago had the status of a foreign district conductor and, under provisions of Rule 38 (e) of the current Agreement, could only be assigned in a direct route to his home station (Buffalo) or to a point within a radius of 50 miles of such home station. In fact, that concession is made by Carrier in its ex parte submission.

In connection with the point now under consideration the Carrier asserts the rule is that the burden of establishing facts sufficient to permit the allowance of a claim is upon the party who seeks its allowance and then insists that Claimant has failed to sustain that burden. There is such a rule, which is frequently applied, and we think the instant case is one requiring its application. The record is devoid of tangible facts. True it is

replete with numerous contradictory assertions on the part of the parties in their respective submissions, stating their conclusions as to the assignment given C. E. Wood when he took over in Line 5227 at Buffalo for the ailing H. E. Wood, the Employees claiming the assignment was actually limited, Buffalo to Chicago, and the Carrier that it included the remainder of the trip. The same holds true of a transcript of the proceedings, included in the record, which is limited to similar bald faced assertions by the representatives of the parties. It may be evidence was introduced at the hearing warranting a conclusion but if so none of it is presented to us in form where we can decide the all important factual question without basing our conclusion on pure guess, conjecture and speculation. Just why Claimant did not produce tangible evidence of the contents of the assignment slip required by Rule 38 (b) if available, and if not demand its production on the part of the Carrier, in which event the latter would have been required to produce it or give sound reasons for its non-production to avoid the rule that its contents would be presumed to be contrary to its position, we do not know. In any event he did not do so and thus, with a record such as is presented, places us in a position where we cannot reach a sustaining conclusion. The result, since we are referred to and find no rule in the Agreement precluding Carrier from assigning Conductor C. E. Wood the remainder of the trip in Line 5227, is that Claimant has failed to maintain the burden of establishing his claim and it must be denied.

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 facts of record as presented fail to show a violation of 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 5th day of August, 1954.