

Award No. 6749

Docket No. PC-6828

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Jay S. Parker, Referee

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**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. G. Hutt, Philadelphia District, that:

(1) Rule 25 of the Agreement between The Pullman Company and its Conductors (Effective January 1, 1948) was violated by the Company on December 23-24, 1950, when the Company used a Night Agent to perform Conductors' work in Line 6348, Philadelphia to Boston, between 11:25 P.M. and 12:15 A.M. Rules 38, 36, and 10 are also involved.

(2) Conductor Hutt was entitled to this assignment and was willing, able and ready to work.

(3) Conductor Hutt be paid not less than a minimum day because of this violation.

**EMPLOYEES' STATEMENT OF FACTS:**

**I**

On December 23, 1950, an operation designated as Line 6348 was in existence. Conductor R. L. Ferguson, Philadelphia District, was regularly assigned to this run, Philadelphia to Boston and return, departing Philadelphia 12:25 A.M., December 24.

On this same date, December 23, another operation designated as Line 6551 was also in existence. Conductor T. J. Craven, Philadelphia District, was regularly assigned to Line 6551, Philadelphia to Pittsburgh and return, reporting at Philadelphia at 9:35 P.M. and departing Philadelphia at 11:25 P.M.

On the preceding day, December 22, the Philadelphia District Office had assigned Conductor Craven Philadelphia to Cleveland and return, departing Philadelphia December 22. At that time the Philadelphia District office arranged with the Cleveland District office of The Pullman Company (via phone) that Conductor Craven would either be returned to Philadelphia on a train which would arrive in Philadelphia in time to permit him to carry out his regular assignment in Line 6551 or failing this that the Cleveland office would notify the Philadelphia office of that fact.

not obligated to make second payment. Thus, having paid Conductor Simmermon in such manner as to comprehend the receiving work in Line 6348, the Company is not obligated to pay a second conductor (Conductor Hutt) for the error Management made in permitting Night Agent Lofland to perform emergency work at the receiving table.

### CONCLUSION

In this ex parte submission the Company has shown that it has paid its total liability for the incident involving the emergency conductor assignments in Lines 6551 and 6348 on December 23-24, 1950, with especial reference to Line 6348. The Company has shown that Conductor Simmermon, who filled in Line 6348 on the dates in question, was credited and paid for all work incident to the Line, which payment covered the period 11:25 P. M., December 23, to 12:15 A. M., December 24, 1950. Further, the Company has shown that Rules 38, 36, and 10, which Rules the Organization claims are involved, were not violated. Additionally, the Company has shown that Award 3831 supports the Company in this dispute. The claim that Conductor H. G. Hutt, Philadelphia District, should be credited and paid a minimum day because he allegedly was entitled to be assigned in Line 6348 during the period 11:25 P. M., December 23-12:15 A. M., December 24, 1950, is without merit and should be denied.

All data presented 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, although uncontroverted, are important to a decision on the merits and should be stated.

On December 23, 1950, Conductor Craven of the Philadelphia District, who was regularly assigned in Line 6551, Philadelphia to Pittsburgh and return, was not available for service in his regular assignment, account of the Company having used him in an emergency assignment. When Craven failed to show up at 9:35 P. M., the reporting time of his regular position, the Company's representative, Night Agent Lofland, made no attempt to fill the vacancy which he knew was bound to exist. Instead of doing so he waited until nearly departure time of Line 6551, to be exact 11:25 P. M., and then assigned Conductor Ferguson to fill the vacancy in such line. At that time Ferguson held a regular assignment in Line 6348, Philadelphia to Boston, with departure time of 12:15 A. M., December 24th, and was on duty in his assignment. Thereupon Night Agent Lofland took over the work of Ferguson's assignment in Line 6348 from 11:25 P. M. to 12:15 A. M. receiving passengers for that line. Subsequently Conductor Simmermon, who arrived at the station on a PRR Train at 12:20 A. M., was assigned to fill the vacancy in Line 6348. He then took over the position vacated by Ferguson and ultimately completed the trip on Line 6348 for which he was paid the full amount Ferguson would have received for his assignment if he had not been taken off his position, including the work performed thereon by Night Agent Lofland prior to the time of Simmermon's arrival in Philadelphia.

From the foregoing it appears that in the late evening of December 23 and the early morning of December 24 there was work on Line 6348 at Philadelphia from 11:25 P. M. to 12:15 A. M., belonging to a conductor, which was performed by an employe outside the Agreement who was not entitled to perform it. It follows the Agreement was violated unless Lofland's use for that period of time on Line 6348 was warranted notwithstanding.

The Company says this appears because an emergency existed during the hours in question. We doubt this is so under the facts of record but assuming that it did the emergent situation relied on was one of the Company's own making for which it was responsible, hence it was not such as to warrant a violation of the contract. Lofland knew, or should have known, of

the situation existing by reason of Conductor Craven's absence on the emergency assignment and should have started doing something about it as early as the hour Craven was due to report for duty on Line 6551. This was 9:30 P. M., an hour at which the record fairly reflects, particularly since the asserted fact is not denied, Claimant was available and could have been called for service. We know of no Awards, and those cited by the Company do not warrant any such construction, holding that Lofland was obliged to postpone or hold off the filling of either of the involved vacancies under the conditions then existing.

Next it is pointed out that Simmermon was paid for the work performed by Lofland. The voluntary payment to the former of something to which he was not entitled does not compensate Claimant for the loss he sustained by being deprived of a call to perform work to which he was entitled.

Conceding Lofland's action in assigning Ferguson to fill Line 6551 resulted in one violation of the Agreement for which it paid Conductor Harrop on the property does not warrant the Company's next argument that to allow the instant claim would result in the assessment of a double penalty for a single violation of the Agreement. These two assignments to which we have heretofore referred sprang from two factual situations, not one, and each resulted in a separate and distinct violation. In such a situation the rule precluding the pyramiding of penalties has no application.

Finally it is contended that because Claimant originally filed the claim for a full trip on Line 6348 and subsequently changed it to a day's pay for the time worked by Lofland there can be no recovery. We know of no such rule and for that reason dispose of this contention without further discussion.

We find nothing in the arguments advanced by the Company to excuse the instant violation. Therefore Claimant is entitled to a sustaining Award.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 Agreement was violated as per the Opinion and Findings.

#### AWARD

Claim sustained.

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.