

Award No. 7361
Docket No. PC-7457

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,
PULLMAN SYSTEM**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of the proper Philadelphia District Regular Conductor that:

1. Rule 31(a) of the Agreement between The Pullman Company and its Conductors effective January 1, 1951, was violated by the Company prior to 7:50 A. M. December 18, 1953, when the Company failed to bulletin a vacancy in Line 6559 (Philadelphia-New York-Harrisburg) covering an operation on Pennsylvania Trains 20-21 known to the Company to be scheduled to resume operation on December 28, 1953.
2. The Memorandum of Understanding Concerning Annulment of Runs dated December 20, 1950, was violated by the Company when it effectively annulled the conductor run designated as Line 6559 on December 31, 1953, but failed to credit and pay held-for-service time as required by the Memorandum of Understanding.
3. The Philadelphia District Regular Conductor entitled to assignment in Line 6559 departing Philadelphia January 1, 1954, be credited and paid held-for-service time as required by the Memorandum of Understanding as a result of the effective annulment by the Company of the conductor run designated as Line 6559 on December 31, 1953.

EMPLOYES' STATEMENT OF FACTS:

I.

At the time this dispute arose there was in existence in the Philadelphia District a conductor run on Pennsylvania Trains 20-21 designated as Line 6559.

A Conductor assigned to this run reported in Philadelphia at 7:50 A. M. the first day, performed road service on Pennsylvania Train No. 20, Philadelphia to New York, and was released in New York at 9:55 A. M. the morning of the first day. The Conductor again reported in New York at 5:35 P. M.

conductor shall be paid held-for-service time in the event his assignment in a regular line operation is annulled for a 24-hour period.

3. No Conductor Is Entitled to Held-for-Service Time as Provided in the Memorandum of Understanding Concerning Annulment of Runs as a Result of the Annulment of Line 6559, Effective January 1, 1954.

Under section 1 of this ex parte submission the Company has shown that Management properly bulletined and awarded the assignments in Line 6559 as provided in Rule 31 (a) of the Agreement. Also, the Company has shown that no rule of the Agreement required Management to bulletin and award the assignments in Line 6559 in such a manner that a regular conductor would go out in the line the day the line was scheduled to resume operation; namely, December 28, 1953.

In section 2 of this ex parte, the Company has shown that the Memorandum of Understanding Concerning Annulment of Runs does not require the Company to pay an extra conductor held-for-service time as provided in Rule 9 in the event an assignment in a run or a run does not operate for any reason for only one day. The Company has shown that the Memorandum applicable when an assignment in a run does not operate for a 24 hour period applies only to regular conductors. Since no regular conductor was operating in the line when effective January 1, 1954, the line was annulled for a 24-hour period, no conductor is entitled to be paid in the manner contended for.

It is thus clear that no conductor, regular or extra, is entitled to be paid held for service under the terms of the Memorandum of Understanding. In fact, the question of pay for held-for-service time as set forth in point 3 of its claim to the Board is contingent on the validity or invalidity of the Organization's claim as set forth in points 1 and 2 of its claim. Since the Company has shown that points 1 and 2 of the claim are clearly invalid, the Company submits that point 3 of the claim is likewise invalid.

The Organization's request that the Philadelphia District regular conductor allegedly entitled to assignment in Line 6559 departing January 1, 1954, be credited and paid held-for-service time as required by the Memorandum of Understanding Concerning Annulment of Runs (21:00 hours) is without substance. The claim is without merit and should be denied.

The Company asserts that all data submitted herewith in support of its position have heretofore been presented in substance to the employee or his representative and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts in this case are not in dispute. Established Line 6559 comprises a three-legged conductor run operating from Philadelphia to New York on Train 20, New York to Harrisburg on Train 21, and Harrisburg to Philadelphia on Train 20, and is manned by Philadelphia District Conductors. This line was temporarily discontinued for certain days during the Christmas holidays 1953. The Pennsylvania Railroad Company, which operates these runs, advised the Carrier in November 1953, that neither Train 20 nor Train 21 would operate on December 24, 25, 26 and 31, 1953.

On December 17, 1953, the Company posted notice in the Philadelphia District to the effect that "The regular Philadelphia District Conductor Operation in Line 6559 between Philadelphia, New York and Harrisburg on PRR Trains 20, 21, will be annulled effective December 24, 1953." This was followed by the issuance of Operation of Conductors for December 22, 1953, discontinuing the conductor operation on Line 6559.

Carrier was also notified by the Pennsylvania Railroad Company in November 1953, that operation of this line would be resumed December 27,

1953. And on December 21, 1953, Notices of Vancancy relating to Line 6559 were posted in the Philadelphia District, with bids for a regular assignment in this line to be received during the following ten days.

Train 20 resumed operation on December 27, departing Indianapolis on that date and reaching Philadelphia on the following morning, December 28. A Philadelphia District extra Conductor was assigned to perform service on Line 6559 from Philadelphia on Train 20 on December 28. Also such extra Conductors were assigned from Philadelphia December 29, 30, and 31, (Train 20 in each instance having originated in Indianapolis the preceding day).

Train 20 was not scheduled to operate on December 31, and did not leave Indianapolis on that date. Consequently, no Philadelphia extra Conductor was assigned to this train January 1, when it should have reached Philadelphia, had it run.

But on January 1, 1954, Train 20 resumed its regular schedule from Indianapolis, and on the morning of January 2, a regular Philadelphia District Conductor was assigned to this run for full time service on Line 6559. This assignment followed the posting of the Notice of Vacancy of December 22, 1953.

The Employees contend that Carrier violated Rule 31(a) in that it failed to bulletin known vacancies promptly, as a result of which work properly belonging to regularly assigned conductors was allocated to extra Conductors. Further, it is claimed that as a result of Carrier's action the regularly assigned Conductor, entitled to be assigned to Line 6559 on and after December 28, 1953, was deprived of held-for-service compensation for January 1, 1954, in accordance with Rule 9 and the Memorandum of Understanding of December 20, 1950.

The Carrier contends that it has complied with Rule 31(a) and that the Memorandum of December 20, 1950 is inapplicable and that no compensation is due any conductor for a mythical run that did not occur on January 1, 1954.

The following language of the Agreement and Memorandum of December 20, 1950 is cited:

"Rule 31. Bulletining of Runs. (a) New runs and each assignment (side) in a run that has preferred assignments (sides) shall be promptly bulletined for a period of 10 days (240 hours) in the district where they occur. Any of the following runs known to be of more than 31 days' duration shall be promptly bulletined for a period of 10 days (240 hours) in the district where they occur:

1. Temporary runs.
2. Seasonal runs.
3. Vacancies.

"Conductors desiring to bid for such runs or assignments shall file their applications with the designated official within the 10-day period they are posted, and awards shall be made within 5 days (120 hours) thereafter on the basis of seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. Conductors bidding on more than one bulletined run or assignment shall specify in their applications their first choice, second choice, etc.

"Q-1. Where a regularly-established run is shortened or a portion of the run is discontinued, shall the remainder of the run be considered a temporary run?

"A-1. No. The remaining portion of the run shall be promptly bulletined.

"Known details of regular assignments, such as service hours, length of layover periods at home station and at away-from-home station and train numbers, shall be shown in bulletins at the time runs are posted for bid."

The Memorandum of Understanding follows:

"It is hereby understood and agreed by and between The Pullman Company and its Conductors represented by the Order of Railway Conductors, Pullman System, that Management shall not annul a run which is discontinued for any reason for only one day (24 hours).

"If an assignment in a run or a run does not operate for any reason for only one day, the conductor shall be credited and paid held-for-service time as provided in Rule 9.

"Signed in Chicago, Illinois, this 20th day of December, 1950.

"For The Pullman Company:

H. R. LARY,
Supervisor of Industrial Relations.

"For the Conductors:

A. G. WISE,
General Chairman, Order of Railway Conductors
of America, Pullman System."

The record makes clear that Line 6559 had been in existence for some time and that it was only temporarily discontinued because of the annulment of certain Pennsylvania Railroad passenger train schedules during the Christmas holidays. Advance notice of this was given both in the Railroad's timetable and by notice to the Pullman Company in November 1953. It was also known that Line 6559 would resume operation on December 27, and that the regular service would be expected out of Philadelphia on December 28. By "promptly" bulletining for the resumption of service a regular conductor could and should have been assigned for the runs between Christmas and New Year's Day.

The Carrier contends that the Memorandum of Understanding concerning the annulment of runs is not applicable since these holiday runs were covered by extra men and the held-for-service rule does not apply to extra conductors. But if Rule 31(a) had been properly complied with and the job promptly bulletined, these runs on Pennsylvania Trains 20 and 21, which resumed operations on December 28, out of Philadelphia should have been covered by a regularly assigned conductor and not by extra conductors. Therefore, the Carrier's argument in this regard fails to impress us.

We must conclude that the Agreement was not complied with in that the bulletining was untimely. Also, had the requirements of Rule 31(a) been properly complied with a regular conductor and not extra conductors would have been used on the dates in question; and under such circumstances, the Memorandum of Understanding of December 20, 1950 was definitely applicable. The regular conductor should, or would, have been subject to the held-for-service rule had Rule 31(a) been properly observed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1956.