Award No. 9587
Docket No. PC-9187

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, 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 Conductor L. L. Borchert, Cleveland District, that:

1. Rule 64 (a) of the Agreement between The Pullman Company and its Conductors was violated by the Company on August 13, 1955, when two Pullman cars were operated in service in NYC Train No. 2/90, Cleveland to Buffalo, without the services of a Pullman Conductor.

2. Rule 38 was violated by the Company on this same date when the Company failed to assign Conductor Borchert to this operation, this Conductor being entitled to and available for the assignment.

3. Conductor Borchert is entitled to credit and pay under appropriate rules of the Agreement (as interpreted by Third Division Awards Nos. 4562 and 7067) in the amount of not less than 6:50 hours, a minimum day, for an extra road service trip Cleveland to Buffalo and not less than 6:50 hours, a minimum day, for a deadhead trip Buffalo to Cleveland.

4. Conductor Borchert has been credited and paid in the proper amount for the extra road service trip Cleveland to Buffalo.

5. Conductor Borchert be credited and paid not less than 6:50 hours, a minimum day, for a deadhead trip Buffalo to Cleveland.

EMPLOYES' STATEMENT OF FACTS:

I.

On August 13, 1955, two Pullman cars in line special en route Cincinnati to Buffalo reached Cleveland on Big Four Train No. 442 at 6:10 A. M.

standing concerning compensation for wage loss, appearing on page 85 of the current Agreement, which adjustment contemplated that the conductor be paid for the "trip lost," a condition not present in this dispute.

Similarly, the dispute settled under Third Division Award 7067, with Edward F. Carter sitting as referee, involved the improper assignment of a conductor (Conductor Glimp) rather than the Company's inability to assign a conductor. In sustaining the claim of the Organization that the conductor who was run-around (Conductor Holt) was due an adjustment under the Memorandum of Understanding concerning compensation for wage loss, the Board stated that the Memorandum of Understanding concerning the manner in which a conductor shall be paid when two or more Pullman cars operate in service without a conductor had no application when a conductor was wrongfully assigned and the penalty for such improper assignment requires payment for the trip lost. Conversely, the Memorandum of Understanding concerning compensation for wage loss has no application when a conductor is required and when because of operating conditions, no conductor is used, a condition present in this dispute.

CONCLUSION

In this ex parte submission the Company has shown that the parties are in agreement that a conductor should have been assigned to protect two Pullman cars operated on NYC 2/90, Cleveland-Buffalo, August 13, 1955, as provided in paragraph (a) of Rule 64. Also, the Company has shown that the parties are in agreement that Conductor Borchert was entitled to the assignment as set forth in **Rule 38. Operation of Extra Conductors.** Additionally, the Company has shown that Management properly compensated Borchert for a service trip, Cleveland-Buffalo, as provided in Item 5 of the Memorandum of Understanding concerning the manner in which conductors shall be paid when two or more cars operate without a conductor. Finally, the Company has shown that the Awards cited by the Organization do not support the Organization's contentions in this dispute.

The claim in behalf of Conductor Borchert is without merits and should be denied.

All data contained herein 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: On August 13, 1955, because of heavy traffic, the New York Central decided to run a second section of Train No. 90 from Cleveland to Buffalo at 6:20 in the morning and attached to it two Pullman cars which had arrived from Cincinnati at 6:10. The second section did not actually leave until 6:39. When the decision was made is not shown. The Pullman Company was not formally notified of the matter, and no conductor was assigned to the section.

Conductor Borchert was on the extra board of the Cleveland District but had not yet established a permanent residence there. On the night of August 12 he told the night agent of The Pullman Company that he would sleep at a certain address where no telephone was available, but finding the place unsatisfactory decided to stay at the station dormitory instead. Finding upon his return to the station that he Carrier's night agent had gone off

duty, he reported orally to someone in the Station Master's office and left a written note on the desk there, stating that he was first conductor out and would be in bed 31 in quarters.

When the claim was presented on the property the Carrier agreed that Rule 64 (a) was violated by the operation of two Pullman cars without a conductor, and that Rule 38 was violated when Claimant was not given the assignment, and that he would be compensated in accordance with Item of the Memorandum of Understanding set forth in pages 82-84 of the then current agreement. Accordingly he was paid for the service trip only. The appeal on the property and here was from denial of deadhead pay.

The Employes' position is that there was no emergency justifying the departure of the second section without a Pullman conductor because Claimant had notified Carrier where he could be found in the station, and that he was available; that the Memorandum of Understanding is not applicable because by its terms it governs only claims arising "under circumstances comparable to those involved in the claims specified in Item 2 and Attachment 'E' of the Mediation Agreement (Docket No. 3099), dated May 16, 1949"; that those cases all arose at outlying points where there was no seniority roster; that this claim is entirely different, since it arose at Cleveland, where there was a roster and Claimant was available; that Claimant was therefor entitled to all he had lost by the violation, namely, the full round trip.

The Carrier's position is that there was an emergency because it was not informed of the railroad's decision to run a second section and Claimant was not available; that in any event the Memorandum of Understanding applied in "every conceivable situation where cars operate without the services of a conductor"; and that under it he was entitled to pay for the service trip, but not for the return deadhead trip.

Thus two questions are presented: First, was this an emergency? Second, if it was not, is the Memorandum of Understanding nevertheless applicable?

So far as here in point Rule 38 provides (a) that all extra work shall be assigned to the extra conductors of that district "when available." However, the Memorandum of Understanding forbids claims of non-availability, and Carrier believed it was applicable; therefore by agreeing that Rule 38 has been violated Carrier did not admit Claimant's availability.

The Employes' Statement of Facts alleges:

> "After the Pullman Night Agent had gone off duty the Cleveland Station Master was the official designated by The Pullman Company to receive the notification deposited by Conductor Borchert.
>
> "It is a long established standard practice in the Cleveland District that when it is necessary to assign a Pullman Conductor after the Night Agent has gone off duty (12:45 A. M. on August 13th) and the time the Pullman office opens in the morning, then such assignments are properly made by the Cleveland Station Master or his representative."

The Carrier argues that Claimant was unavailable because of his earlier notice to it that he would not be available by telephone, and that there was an emergency because of the railroad's failure to give notice of its intention to run the second section. But Carrier does not deny the above statements concerning the Station Master. Therefore we must conclude on the record that the Carrier was notified of Claimant's immediate availability several hours before the incident arose. We cannot, therefore, find that there was an emergency.

The next question is whether this claim nevertheless arose "under circumstances comparable to those involved in the claims specified" in the Mediation Agreement, so as to make the Memorandum of Understanding applicable.

In its Ex Parte Submission here the Carrier states that the Memorandum of Understanding relates to circumstances comparable to those involved in the Mediation Agreement, "i.e., under emergency situations caused by splits in trains, etc.) * * *."

At the hearing on the property Carrier's representative stated the conclusion that "the parties agreed to certain adjustments covering every conceivable situation where cars operate without the services of a conductor," apparently referring to the detailed provisions of Items 1 to 5 concerning various types of assignments. He also stated that the Memorandum of Understanding was consummated to prohibit the Carrier's claim of non-availability and to provide for the settlement of cases "where, in an emergency, two or more cars operate without the services of a conductor." He argued further that this claim, arising at Cleveland, was not different from those mentioned in the Memorandum, "which cases involved the operation of two or more cars without a conductor between two outlying points or between the outlying point and a district or agency." But in reply to the Employes' citation of an award concerning Claimant Holt the Carrier's representative argues that "the circumstances in that case are much different than the circumstances in the present case. For one thing, the present case concerns a trip between two districts, the Holt award concerns a trip between a district and an outlying point." Certainly with regard to availability of extra conductors the initial point is much more material than the terminal point.

Admittedly all of the claims mentioned in Item 2 and Attachment "E" arose at outside points, where no conductor was available. It seems apparent that this claim does not arise under circumstances comparable to those, since they arose at a district and Claimant was available there.

Under the authority of such Awards as 4562, 7067 and 8688 we conclude that Claimant was entitled to what he lost by the violation, and that the claim should be sustained.

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 Employes involved in this dispute are respectively Carrier and Employes 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 inpolved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1960.