

**Award No. 9792**

**Docket No. PC-9885**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Joseph E. Fleming, Referee**

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**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 W. T. Huntemann, Washington District, that:

1. The Pullman Company violated Rule 38 of the Agreement between The Pullman Company and its Conductors when on November 25, 1956, it failed to assign Conductor Huntemann in extra service on Southern Railway train #17, Washington, D. C., to Birmingham, Ala.

2. We now ask that because of this violation that Conductor Huntemann be credited and paid for an extra service trip, Washington to Birmingham, on Southern Railway train #17 and for a deadhead trip, Birmingham to Washington.

**EMPLOYES' STATEMENT OF FACTS:**

**I.**

There is an Agreement between the parties, bearing the effective date of January 1, 1951, and amendments thereto, are on file with your Honorable Board and by this reference is made a part of this submission, the same as though fully set out herein.

For ready reference and convenience of the Board, the most pertinent parts of Rule 38 (c), which are directly applicable to the dispute are quoted as follows:

"A regular signout period shall be established in each district, at which time assignments shall be made for a succeeding 24-hour period. Such 24-hour period shall be designated as a signout day, and the specific signout period of the signout day shall be determined by local conditions. The signout period shall be not less than 30 minutes nor more than 3 hours in length. The local chairman shall be notified in writing by the district representative at least 5 days in advance of any change in the schedule of the signout period or the signout day and bulletin shall be posted for information of the conductors."

the Organization's claim in behalf of Conductor Stiffler in hearing held January 31, 1957. Additionally, the Company has shown that the Organization abandoned its claim in behalf of Conductor Stiffler on appeal and initiated in the letter of appeal a new claim in behalf of Washington Conductor W. T. Huntemann, in which claim the Organization alleged that Huntemann improperly was deprived of an assignment, Washington-Birmingham, on Southern train 17. The claim in behalf of Conductor Huntemann was not filed in the Washington District as required in Rule 51 of the working Agreement and, thus, was not handled on the property in the "usual manner" as required by the Railway Labor Act. Accordingly, the claim in behalf of Huntemann is not properly before the National Railroad Adjustment Board and should be dismissed.

Also, the Company has shown in this ex parte submission that even if the case were decided on its merits the claimant, Conductor Huntemann, would not be entitled to adjustment since he would not have performed the Birmingham trip if assigned to it. The claim in behalf of Conductor Huntemann for a trip Washington-Birmingham and return is without merit and should not be sustained.

All data submitted herewith 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:** During the signout period for extra conductors in the Washington District on November 25, 1956, there were four road service assignments to be filled. The first road service assignment was a trip Washington-Birmingham on Southern train 17, reporting time 3:10 P. M. November 25, 1956. The second road service assignment was a trip Washington-Parkersburg, W.Va. on Baltimore & Ohio train 17, reporting time 9:20 P. M.

The third conductor, C. E. Stiffler, was listed with 118:40 hours. The fourth conductor was unavailable and the fifth conductor, W. T. Huntemann, was shown with 122:15 hours. Under Rule 38 the first assignment, Washington to Birmingham, was given to Conductor C. E. Stiffler but he was displaced by Conductor F. G. Peters. The second assignment was made to the second available conductor, W. T. Huntemann, who did fill the Parkersburg assignment.

It was discovered that the relief clerk had made a mistake in charging hours to the two above named conductors and that if their hours were properly posted their positions would have been reversed.

A claim was filed on December 11, 1956 in behalf of Conductor Stiffler for compensation for the Parkersburg assignment which was filled by Huntemann. This claim was denied by Supt. Leban on February 18, 1957.

On March 5, 1957 Mr. Wise wrote to Mr. Dodds, the Appeals Officer, as follows:

"Dear Mr. Dodds:

Re: Claim C 56-373

Hearing with you is respectfully asked in the claim of Conductor W. T. Huntemann of Washington District, in which we contend that

on November 25, 1956, the Company violated Rule 38 of the Agreement between The Pullman Company and its Conductors, when:

1. Conductor Huntemann was not given an assignment in extra service on Southern Railway Train #17 Washington to Birmingham.
2. We now ask that because of this violation Conductor Huntemann be credited and paid for an extra service trip Washington to Birmingham on Southern Railway Train #17 and for a dead-head trip Birmingham to Washington.

Appeal is taken from the unsatisfactory decision of Superintendent J. L. Leban dated February 18, 1957.

I will telephone you for a mutually convenient appointment."

The Organization contends that the Carrier's defense to Stiffler's claim was that Huntemann was the proper claimant and offered to make a settlement with Huntemann. This may be true but an offer of compromise is, after its rejection, no longer binding on the party who makes it. Presuming that the Carrier admitted Huntemann had a claim the fact remains that no claim was filed for Huntemann until the limitation had expired under Rule 51 of the Agreement.

Rule 51 says:

"Claims. When a conductor considers that any rule of the Agreement has been violated, he or his duly authorized representative may present a claim of rule violation to his district representative. Such claim shall be made in writing by the conductor, or his representative, within 60 days from the date of the occurrence of the alleged violation. If not so presented, claim will be barred."

Huntemann did not make a claim until March 5, 1957, three months and seven days after the date of the alleged violation.

**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 claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1961.