

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, 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 Conductors J. Lister and A. A. Beach, of the Montreal District that The Pullman Company violated Rule 30 (a) of the Agreement when:

1. On February 25, 1957, several New York District Conductors were assigned to deadhead from New York to Halifax, Nova Scotia, to perform service out of Halifax, an outlying point under the jurisdiction of the Montreal District.

2. We contend that Conductors Lister and Beach should have been assigned to perform the work arising under the jurisdiction of their own District.

3. We now ask that Conductors Lister and Beach be credited and paid for deadhead trips, New York to Halifax, and for service trips that were due them out of Halifax just as though they had made the trip, and if a return trip was involved, that they be paid for deadhead trips after completion of the service trips back to their home station, Montreal.

EMPLOYES' STATEMENT OF FACTS:

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There is an Agreement between the parties, bearing the effective date of January 1, 1951, and amendments thereto 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 part of Rule 38 **Operation of extra conductors**, (a), which is directly applicable to the dispute is quoted as follows:

"There are numerous awards of this Division which hold the burden of establishing a claim is upon the one who asserts it, that is, the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks the allowance. See Awards 4011, 2577, 5445."

See also Third Division Awards 7226, 7225, 7200, 7199, 6964, 6885, 6844, 6824, 6748 and 5418.

In the case at hand, the Organization has not and cannot establish facts which support its allegation that the working Agreement has been violated. The Organization has not met its burden of proof. The claim, therefore, should be denied.

CONCLUSION

The Pullman Company has shown in this ex parte submission that requirements for 6 Pullman conductors to operate in service from Halifax, an outlying point under the jurisdiction of the Montreal District, to New York became known in the Montreal District at 10:00 A. M., February 25, 1957, and that in the absence of available Montreal extra conductors, the Montreal District arranged to have the requirements filled with New York and Boston District conductors. The Company has shown that this procedure was in accordance with Question 7 and Answer 7 of Rule 23 and with Rule 38. Further, the Pullman Company has shown that the Organization has presented no theory of the case which finds support in the working rules, its position that Lister and Beach should have been deadheaded to Halifax from New York being contrary to Rules 38 (c) and (e). Finally, the Company has shown that the Organization has not established facts sufficient to permit the allowance of the claim.

The Organization's claim 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 employees or their representatives and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This controversy concerns the assignment of extra conductors to perform service out of Halifax, Nova Scotia, an outlying point under the jurisdiction of Carrier's Montreal District. The assignments became necessary when an emergency arose requiring six extra conductors for service on three special trains to be sent from Halifax to New York on February 27, 1957. No extra conductors were then available in the Montreal District and it requested the New York Central District to furnish the necessary men. Claimants, two Montreal District Conductors, were in New York City at the time the assignments were made, having just completed an extra service trip from Montreal, and were ignored in the selection of extra conductors for the Halifax work.

Petitioner alleges that Carrier violated Rule 38 (a) of the applicable Agreement when it failed to use the Claimants in the assignment. It insists that Claimants were "available" within the meaning of the Rule and that the Montreal District, either directly or through the New York Central District, should have designated them for the service in question. On the other

hand, Carrier maintains that it complied with all pertinent provisions of the Agreement in making the assignments.

The assignments complained of arose directly from and as an incident of an emergency situation. This was emphasized in the submissions of both Petitioner and Carrier. Time was of the essence in designating the extra conductors and schedules, including deadheading arrangements, had to be speedily worked out and accommodated. At the time the assignments became necessary, Claimants were not physically within the Montreal District and it was too late to deadhead them back to Montreal in time to meet the emergency in Halifax. We are satisfied that Montreal and not Halifax was their "home station" within the meaning of Rule 38 (e) although the latter city was under the jurisdiction of the Montreal District. It is our conclusion that in this specific factual situation, Claimants were not in the "available" status contemplated by Rule 38 (a) and Carrier can not be held to have violated the Agreement. The claim will 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 9th day of June, 1961.