

Award No. 9991

Docket No. PC-9941

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, 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 W. W. Long of the Birmingham Agency, in which we claim that The Pullman Company violated Rules 25, 66, and 38 (a) of the Agreement between The Pullman Company and its Conductors, when --

1. On October 26, 1955, Conductor Long was not given an assignment on L & N train 60-99 from Flomaton, Alabama to New Orleans, Louisiana.

2. We now ask that Conductor Long be credited and paid not less than 6:50 hours, a minimum day, for a deadhead trip Montgomery, Alabama to Flomaton, and for a service trip of not less than 6:50 hours under the applicable rules from Flomaton to New Orleans, and for a deadhead trip of 10:15 hours under the provisions of Rule 7 from New Orleans to Birmingham because of this violation.

EMPLOYES' STATEMENT OF FACTS:

I.

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 pertinent parts of the Rules which are directly applicable to the dispute are quoted as follows:

"RULE 25. Basic Seniority Date. The seniority of a Conductor, which is understood in this Agreement to mean his years of continuous service from the date last employed, shall be confined to the district where his name appears on the seniority roster.

RULE 66. The Jurisdiction of Districts and Agencies. No revision of the Book of Maps of May 16, 1949, captioned **THE JURIS-**

the L&N Railroad operated L&N train 60 from Flomaton to New Orleans in place of L&N train 99 without advance notice to proper representatives of The Pullman Company. Further, the Company has shown that in the emergency situation regular Conductor S. A. Pomar of the Jacksonville District handled the Pullman equipment on train 60 from Flomaton into New Orleans, as permitted by Rule 36 of the working Agreement. Also, the Company has shown that Birmingham extra Conductor Long, the claimant in this dispute, was not available for the Flomaton assignment within the meaning of Rule 38 and that neither Rule 38 nor any other rule of the working Agreement was violated. Finally, the Company has shown that its position is supported by Third Division Award 3833.

The claim in behalf of Conductor Long is without merit and should be denied.

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: There is no dispute between the parties concerning the following facts which resulted from a strike of non-operating employes on the L. & N. Railroad, effective at Birmingham on October 24, 1955, and at Montgomery on October 25, 1955:

1. That Train 99, which usually operated between Cincinnati and New Orleans via Flomaton, with Cincinnati District Conductors in charge, was cancelled and did not operate south of Nashville.
2. That, on October 25, Claimant Conductor Long was assigned by the New Orleans District to deadhead to his home terminal at Birmingham; he deadheaded on Train 6 to Montgomery and then by bus to Birmingham.
3. That, on October 26, Train 60 from Jacksonville to Flomaton ran through to New Orleans with Conductor Pomar, who elected to remain thereon account of there being no Pullman agent at Flomaton and no conductor on hand to relieve him at that point.

The employes state that the determining point in this controversy is the availability of Conductor Long for the assignment to Train 60, Flomaton to New Orleans on October 26, 1955. The facts show that the Carrier properly assigned the claimant on October 25 to deadhead to his home terminal at Birmingham. The claimant did deadhead on Train 6 to Montgomery and when he reached Montgomery, due to a strike of non-operating employes of the L. & N. Railroad, Train No. 6 did not operate North of Montgomery on that date. Claimant Conductor Long was notified at Montgomery to deadhead from Montgomery to Birmingham via bus. Before we can ascertain whether or not the claimant was available for assignment to Train 60, Flomaton to New Orleans on October 26, 1955, we must first ascertain whether or not the Carrier could have properly annulled claimant's deadhead assignment at Montgomery on October 25. As the petitioner admits, there was no emergency on October 25 at Montgomery insofar as this claimant was concerned. Rule 38 (b) of the effective agreement specifies the conditions under which Management has the right to annul an extra conductor's assignment. From a careful reading of Rule 38 (b), none of the conditions apply to the present situation. And if the

Carrier had annulled the claimant's assignment on October 25, it would have violated Rule 38 (b). The last paragraph of Rule 38 (b) states:

"It is understood that Management has the right to change an extra conductor's assignment when the destination of his train is changed en route, in which event the conductor will continue to the new destination."

The destination of the claimant's deadhead train was not changed en route. The train was terminated at Montgomery due to the strike. Therefore, the claimant conductor could not continue to the new destination of the train and the Carrier had the right to have him continue on his October 25 assignment to Birmingham by bus. Under these conditions, the claimant was not available on October 26 for the assignment on L. & N. Train 60-99 from Flomaton, Alabama, to New Orleans, Louisiana. Therefore this 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 Employee involved in this dispute are respectively Carrier and Employee 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 14th day of July 1961.