

Award No. 10181

Docket No. PC-10802

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, 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 J. R. Deckard, Philadelphia District, that paragraphs (b) and (c) of Rule 38 of the Agreement between The Pullman Company and its Conductors were violated when:

1. On August 30, 1954, Conductor C. P. Carr, Philadelphia District, was removed from his station duty assignment and assigned to deadhead on Reading train No. 331 from Philadelphia to Bethlehem to return in service from Bethlehem to Philadelphia, on Reading train No. 356.

2. We now ask that Conductor J. R. Deckard, a regularly-assigned Conductor who was at home on vacation, be given the same credit and pay that he would have received had he actually been assigned to deadhead from Philadelphia to Bethlehem and return in service from Bethlehem to Philadelphia, on Reading train No. 356.

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 reference and convenience of the Board, the pertinent parts of Rule 38 applicable to this dispute are quoted. Also included are Question and Answer 13 of the Vacation Agreement effective January 1, 1954:

"RULE 38. Operation of Extra Conductors.

"(b) Extra conductors shall be furnished an assignment slip showing time and place required to report for duty, also destination.

"It is understood that Management has the right to annul an extra conductor's assignment under the following conditions:

pany to call Conductor Deckard. This the Organization has not done and cannot do. See Third Division Awards 2496, 5331, 6022, 6187, 6384, 6944, 7113, 7349, 7362, 7715 and First Division Award 15119.

CONCLUSION

In this ex parte submission the Company has shown that in the emergency existing on August 30, 1954, the Company properly removed Conductor Carr from his station duty assignment and assigned him to deadhead to Bethlehem for return service Bethlehem - Philadelphia on Reading train 356. Also, the Company has shown that a conductor on vacation is not entitled to be considered for any assignment during the period he is on vacation and is not entitled to an adjustment in the event he is not called. Finally, the Company has shown that Awards of the National Railroad Adjustment Board support the Company in this dispute.

The Organizations' claim in behalf of former Conductor Deckard 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: At 1:00 P. M. and again at 2:31 P. M. on August 30, 1954, the Carrier received information that two conductors would be needed out of the Philadelphia District to deadhead on August 30th on Train No. 331 to Bethlehem, Pa., in order to protect early morning Bethlehem to Philadelphia assignments on Reading Trains 312 and 356 on August 31st.

At the close of the 10:00 A. M. to noon signout period on August 30, 1954, there were four unassigned extra conductors. The Carrier made persistent but unsuccessful efforts to give the assignments to two of the four unassigned extra conductors. The Carrier also tried unsuccessfully to contact regular conductors W. P. Johnson, T. D. Dougherty and O. H. Wentz.

At 5:50 P. M. the Carrier contacted regularly assigned conductor W. J. Remy and assigned him to deadhead to Bethlehem on Reading Train No. 331 for return service on Reading Train No. 312. Train No. 331 was scheduled to leave Philadelphia at 10:15 P. M.

At 9:45 P. M. regular conductor W. L. Kannapel agreed to relieve extra conductor C. P. Carr from his station duty so that Carr could deadhead to Bethlehem on Reading Train No. 331 for return service on Reading Train No. 356.

The Organization contends that conductor Carr received his station duty assignment during the regular signout period on August 30th; that the Carrier violated Rules 38 (b) and (c) of the Agreement when it improperly removed Carr from that assignment; that no emergency existed; and that the Carrier should have called the Claimant.

The pertinent parts of Rule 38 are as follows:

"RULE 38. Operation of Extra Conductors.

"(b) Extra conductors shall be furnished an assignment slip showing time and place required to report for duty, also destination.

"It is understood that Management has the right to annul an extra conductor's assignment under the following conditions:

"(1) When assigned in lieu of a regularly-assigned conductor who has been laying off and the regularly-assigned conductor reports for his assignment before scheduled reporting time.

"(2) When the cars in his charge are consolidated with cars of another train, or trains, that are in charge of a Pullman conductor, or Pullman conductors, except an extra conductor's assignment shall not be annulled when the cars in his charge are consolidated with the cars of another train that are in charge of a Pullman conductor and, by such consolidation, the need for an additional conductor is created.

"(3) When a foreign district conductor is available for service as provided in paragraph (e) of this Rule.

"(4) When he is filling a regular assignment at an outlying point under the jurisdiction of his home station and he is awarded a regular assignment under the provisions of Rule 31; when a reduction of force is necessary under the provisions of Rule 40; or when he is to be transferred under the provisions of Rules 41 or 42.

"(5) When an assignment does not materialize after the assignment has been made because a railroad annuls the operation of a train or cancels extra cars to the number that a conductor is not required as provided in the rules.

"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.

"(c) . . . An extra conductor assigned to station duty shall not be given another station duty, road service or deadhead assignment (i.e., a double assignment) during the signout period. An extra conductor assigned to station duty shall be given a road service or deadhead assignment which occurs and which has a reporting time within his tour of station duty.

"It is further understood an extra conductor who has been assigned to station duty and who has completed his tour of duty on the station duty assignment and still has the least number of accumulated hours in the current month, including the hours earned on the station duty assignment, shall be considered the next unassigned conductor and shall be assigned to an assignment which occurs after the close of the signout period and which assignment has a reporting time between the time his station duty assignment was completed and the beginning of the next signout day."

"VACATION AGREEMENT FOR PULLMAN CONDUCTORS.

"Q-13. Shall a conductor be paid under the provisions of Rule 24 of the conductors' working Agreement when he is required to perform road service on his specified layover or relief days occurring within his scheduled vacation period?

"A-13. Yes."

The Carrier claimed that it did not improperly remove conductor Carr from his station duty assignment; that an emergency did in fact exist; and that the Carrier had no obligation to call the Claimant for the assignment in question.

The Carrier cited Rules 36 and 38 (a) in support of its position. The pertinent parts of those Rules are as follows:

"RULE 36. Continuance in Regular Assignment.

A conductor operating in regular assignment shall not be used in service outside his assignment except in emergency and as provided in paragraph (d) of Rule 38.

"RULE 38. Operation of Extra Conductors.

(a) All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra conductors of that district when available, except as provided in paragraphs (d) and (e)."

According to the pertinent contractual provisions, the Carrier was obligated to use an available extra conductor in preference to a regular conductor. The record indicates that extra conductor Carr was available, was used and did perform the required services.

It is to be noted that there is no rule in the current Agreement which specifically provides for assigning extra work to regularly assigned conductors who are on vacation.

It is our Opinion that this case is largely hinged on whether or not an emergency situation existed.

The record indicates that for many hours — up until 9:45 P. M. — the Carrier diligently and conscientiously but unsuccessfully tried to secure from the rosters of extra and regular conductors, a conductor for service on Train No. 356.

The record also indicates that it was only 30 minutes before the 10:15 P. M. deadline when the Carrier finally secured the services of extra conductor Carr for service on Train No. 356.

There is no doubt that the Carrier made every reasonable and possible effort to fill the assignments in keeping with contractual provisions. Furthermore, the extremely limited period of time (one half hour) remain-

ing to the Carrier for securing a conductor's services for Train No. 356 — had progressed the situation to an emergency status. Even the Claimant admitted that an "emergency assignment" existed.

It is our conviction that in emergency situations the Carrier has a discretionary and judgment latitude it doesn't ordinarily possess. In Award No. 5766 (Smith) this Board held:

"This Board has held in numerous awards that a Carrier may (as here) take any action deemed necessary to meet an emergency."

In Award No. 9394 (Hornbeck) — this Board denied a claim — based on an existing emergency — ruling as follows:

"As we understand, the Awards of this and other Divisions of the Board recognize that the Carrier in an emergency has broader latitude in naming employees than in a normal situation. In an emergency it may assign such employees as good judgment in the situation dictates and it will not be obligated to exercise that care and thoughtfulness in its action which would under ordinary conditions be required."

We hold that — based on the existing emergency situation — the Carrier's action in removing conductor Carr from station duty was proper and not in violation of the Agreement. Furthermore, Rule 38 (c) does not prevent Carrier from giving a conductor assigned to station duty — a road service assignment which arises after the signout period — when no other conductor is available. The need for Carr's services — as well as the assignment reporting time — developed within the hours of Carr's station duty assignment. Therefore, we must conclude that the Carrier did not violate Rule 38 when it removed conductor Carr from station duty to fill a road service assignment.

There is no rule in the present Agreement which required the Carrier to use the vacationing Claimant.

Accordingly, we must deny the Organization's claim.

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

That the parties waived oral hearing;

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

Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 13th day of November, 1961.