

Award No. 10514

Docket No. PC-11855

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

David Dolnick, 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 T. E. Talley, Dallas District, in which we contend that under date of May 20, 1959, The Pullman Company violated the rules of the Agreement between The Pullman Company and its Conductors, with specific reference to Rules 38 and 36, when:

1. Conductor Talley was not permitted to perform an assignment performed by regularly-assigned Conductor C. M. Nichols on Frisco train #518 between Dallas, Texas and Tulsa, Oklahoma, returning in deadhead service.

2. Because of this violation we now ask that Conductor Talley be credited and paid the same amount he would have been paid had he been assigned to this trip, Dallas to Tulsa and return.

I.

EMPLOYEES STATEMENT OF FACTS: Under date of May 20, 1959, there was an extra assignment out of the Dallas District on Frisco train #518 from Dallas, Texas to Tulsa, Oklahoma, returning in deadhead service from Tulsa to Dallas. Reporting time for this extra assignment in Dallas was 9:20 P. M.

Extra Conductor T. E. Talley arrived in Dallas on the morning of May 20, 1959, reported at the Pullman office and was advised by Signout Clerk Sanford that he (Conductor Talley) was the only extra conductor in town, and that there was an extra assignment on Frisco train #518 with a reporting time of 9:20 P. M., same date. Conductor Talley informed Signout Clerk Sanford that he would go to his home and obtain some rest so that he would be in condition to make the trip.

The regular signout period in Dallas is from 2:00 P. M. to 2:30 P. M. (See Rule 38 (c).) The Company alleges that Signout Clerk Sanford attempted to contact Conductor Talley at his home on May 20, 1959, at 2:03 P. M., 2:20 P. M. and 2:29 P. M. but was unable to do so; that the Signout Clerk

OPINION OF BOARD: The facts in this case are not in dispute. The signout period for extra conductors in the Dallas District was from 2:00 P. M. until 2:30 P. M. Extra assignments were filled from 2:31 P. M. on the day they arose until 2:30 P. M. the following day. On May 20, 1959, the Claimant, who was an extra conductor, arrived in Dallas in the morning, and reported at the Pullman Company office at about 11:00 A. M. He was the only extra conductor in town. He was told by the signout clerk that there was an extra assignment on train 518 from Dallas, Texas, to Tulsa, Oklahoma and dead-head on pass on train 517 from Tulsa to Dallas. The reporting time in Dallas was 9:20 P. M. on May 20, 1959.

The record shows that the Claimant told Miss Sanford, the signout clerk in the Pullman Company office in Dallas that he would "rush on home and get some rest and be ready to go back to Tulsa that night. . ." He went home and went to bed about noon of that day.

At 2:30 P. M., the signout clerk telephoned the Claimant's home for the purpose of officially giving him the assignment. There was no answer to the telephone call. The signout clerk called again at 2:20 P. M., 2:29 P. M., 3:00 P. M., 3:20 P. M., and 3:30 P. M. and there was still no response to each of the telephone calls. At 3:30 P. M. on May 20th, the signout clerk called regular assigned conductor C. M. Nichol and gave him the assignment. There were no other extra conductors available or expected to arrive between the close of the signout period and the reporting time of 9:30 P. M.

The Claimant was home fast asleep and did not hear the telephone ring on each of the occasions. He awoke at about 5:00 P. M. and he tried to call the Pullman Company office, but it was closed and there was no one available. He was not furnished with the home telephone number of the signout clerk.

The Claimant prepared himself and proceeded to the Railway Station ready to go to work. He arrived there at approximately 9:15 P. M. and he was advised that Mr. Nichol had been assigned. Upon learning this fact, he made inquiry and was able to obtain the home telephone of Miss Sanford, the signout clerk. He so telephoned her and she replied that she could not change the assignment and that since he was not available when she called him, she was obliged to permit Mr. Nichol to continue the run.

A claim was filed on behalf of the Claimant which was properly processed through all stages of handling on the property.

The Organization contends that the Carrier violated Rule 36 which reads as follows:

"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."

It is the Organization's position that an emergency did not arise since the Claimant had advised the Carrier that he would be available for the extra run and that in no event should conductor Nichol been assigned until such time close to the 9:20 P. M. reporting time as is reasonably necessary. The Carrier on the other hand contends that the emergency occurred between 2:00 P. M. and 2:30 P. M. on May 20, which was the regular signout time for extra conductors, and since the Claimant did not respond to several telephone calls to his home he was not available for that assignment.

Both parties also rely on the interpretation of Rule 38 which reads, in part, as follows:

"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 paragraph (d) and (e).

* * * * *

"(c) A regular signout period shall be established in each district, at which time assignments shall be made for a succeeding 24 hour period. Assignments shall be made by Management as early as is reasonably possible during the signout 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.

* * * * *

"Management shall be required to notify the extra conductors by telephone or wire. The conductor must register the telephone number with the superintendent or agent. Unassigned local conductors who are in their home stations will be available during the signout period until assigned. In case it is impossible for a conductor to secure a telephone from the telephone company, it will be permissible to notify him by wire during the signout period in which event the the transmission of such a wire will constitute assignment of that conductor and acceptance of that assignment by the extra conductor.

"Q-9. What is meant by 'available' as used in paragraph (a) of this Rule?

"A-9. 'Available' means that the conductor entitled to an assignment can be contacted and assigned and can reach the point where he is required to report by scheduled reporting time.

"However, an extra conductor who reports at his home terminal after the assignments have been made for the signout day shall not be privileged to displace any of the local extra conductors already assigned, but may displace a regularly assigned conductor or a foreign district conductor assigned to a movement not on a direct route towards his home station (regularly-assigned conductor to be displaced first)."

The Carrier emphasizes the fact that since the Claimant reported at his home terminal prior to the signout period, he was not entitled to displace the regularly-assigned conductor. It was admitted during the hearing that had the Claimant reported at his home terminal after the signout period he would have been eligible to replace the regularly-assigned conductor.

It this Board was called upon to interpret Rules 36 and 38 solely upon the language contained in the Agreement, and herein quoted, it would have

been initially required to further study what the parties meant by the term "available". The parties, however, have given meaning and intent to these Rules by reason of certain memorandums and correspondence which passed between the Carrier and the Organization.

On September 20, 1946, Assistant Vice President Leach issued instructions which in part reads as follows:

"Also, as agreed in the telephone conversation with Boeckelman, we are instructing our representatives that should an extra conductor become available after the regular conductor is called in emergency to protect an extra assignment and reports to protect the extra assignment, the extra conductor shall be allowed to take the assignment and the regular conductor pay for 'called and not used'."

Also, the Company's instructions to district representatives relating to unfilled assignments are:

"I am instructing our District Representatives that in the future extra assignments should not be given to regular conductors at the signout period and that those assignments should be held until fairly certain that an extra conductor will not be available; further a regularly assigned conductor should be called only in sufficient time to protect the assignment."

The Board is of the opinion that the Claimant in this case "became available" when he advised Miss Sanford, the signout clerk, at approximately 11:00 A. M. on May 20 that he would take the run and that he was going home for some sleep. We do not believe that the language in Rule 38 which provides that unassigned local conductors shall be available during the signout period means strictly that such conductors must necessarily and solely indicate their availability only during the signout hours. In other words, we do not believe that the Claimant in this case was required to make known his availability only between the hours of 2:00 P. M. and 2:30 P. M. The fact is that the Carrier admits that the signout clerk called the Claimant as late as 3:20 P. M. or an hour after the end of the signout period. This is an admission that even the Carrier did not give too much credence to the literal interpretation of the contract language. Our conclusion is fully supported by the Carrier's interpretation of Rule 38.

Further, under Rule 38 the Carrier could have notified the Claimant by wire, and if it had done so "the transmission of such a wire will constitute assignment of that conductor and acceptance of that assignment by the extra conductor". If instead of telephoning to the employee's residence, the signout clerk had wired the Claimant at 2:00 P. M. or thereafter, the Claimant would not have been required to call the signout clerk or anyone else in the Carrier's office to officially advise them that he was "available" for such assignment. This condition is not changed by the mere fact that the Carrier elected to telephone the Claimant instead of wiring him.

On the basis of the record, the provisions of the Agreement, as well as the understanding had between the parties, it was the Carrier's obligation to exercise greater care in making the assignment in this case. The signout clerk was not diligent in light of the fact that she knew and had personally heard from the Claimant that he would have been available for the assignment.

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

That the parties waived oral hearing;

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 involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1962.