

**Award No. 10590**

**Docket No. PC-12005**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Levi M. Hall, 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 J. E. Miller, Atlanta District, that Rules 38 and 39 of the Agreement between The Pullman Company and its Conductors were violated, when:

1. On February 4, 1957, Conductor R. L. Deal, Birmingham Agency, was given an assignment on Southern Railway Trains 48 and 29, Atlanta, Ga., to Greensboro, N. C., and return.

2. We now ask that Conductor Miller be credited and paid the same amount he would have received had he performed the assignment given to Conductor Deal.

**EMPLOYEES' 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 most pertinent parts of Rules 38 and 39, which are directly applicable to this dispute, are quoted 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 paragraphs (d) and (e).

"(c) \* \* \*

(Exhibits not reproduced.)

**OPINION OF BOARD:** Pertinent facts involved are not in dispute. Conductor Young had been transferred to the Atlanta District under Rule 42 of the Agreement. On February 1st, 1957, Conductor Deal senior to Young at Birmingham was furloughed; he then notified the Carrier on that day it was his intention to displace junior Conductor Young who was on a temporary transfer from Birmingham to Atlanta, Georgia on February 4th, 1957. After Conductor Deal had declared his intention and Conductor Young had been notified, the Atlanta District, there being no other extra conductors available, gave Conductor Young two assignments, the second of which took him away from Atlanta and from which he did not return to Atlanta until 6:30 P. M., February 5th, when he was deadheaded back to Birmingham. In the meantime, on February 4th, the Carrier deadheaded Conductor Deal to Atlanta in accordance with his displacement request, Deal arriving in Atlanta at 1:30 P. M., February 4th, prior to the established sign out period which began at 3:00 P. M. Deal was then given an assignment to Greensboro and return. This action by the Carrier caused Atlanta District extra Conductor Miller who was available to be passed by.

It is the position of the Petitioners' that Conductor Deal under the rules deadheaded to Atlanta for the sole and only purpose of displacing junior Conductor Young who was on a temporary transfer to the Atlanta District, that Young was not in Atlanta on February 4th due to the assignments given to him by the Carrier after notification of Deal's intention to displace him on the extra board at Atlanta, that, consequently, Deal could not replace Young on the extra board until he, Young, returned to Atlanta on February 5th; that the attempt by the Carrier to place Deal on the extra board on February 4th was in violation of Rule 39 of the Agreement; that when the Carrier gave to Deal the assignment to Greensboro and return it violated Rule 38 (a) and (c) as the Carrier did not comply with Rule 39; that Conductor Deal, under the circumstances, could be classified merely as foreign conductor in the Atlanta District and his only fixed rights were those he obtained under Rule 39.

It is the contention of the Carrier on the other hand that Conductor Deal was properly assigned to service during the February 4th signout period as provided in Rule 42 and there has been no violation of Rule 38, 39 or any other rule of the Agreement. The Carrier maintains, therefore, that no adjustment is due Conductor Miller.

Tersely, the pertinent Sections of the Agreement in dispute are, as follows:

"RULE 39. Regulating the Number of Conductors on the Extra Board. The extra board of a district shall be maintained by using thereon the number of conductors which shall afford as nearly as possible minimum earnings of three-fourths of a basic month's pay for each conductor who does not lay off of his own accord. The intention under this Rule is to allow conductors working on the extra board an opportunity to average as nearly as possible full time before additional conductors are recalled from furlough, obtained by transfer, or employed . . ."

\* \* \* \* \*

"Where conductors are on temporary transfer from a district in which it becomes necessary to furlough conductors, the furloughing

shall be made on a seniority basis as provided in Rule 40 and men senior to those on temporary transfer who are to be furloughed shall be given the privilege of displacing the junior conductor on temporary transfer. However, should such a senior conductor not wish to exercise this privilege of displacing the junior man at the away-from-home district, such a refusal shall be made in writing and the junior employe allowed to remain at work on the temporary transfer, with the proviso, however, that such a senior conductor on furlough shall have the privilege of displacing the junior conductor at any time he desires."

"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, . . ."

\* \* \* \* \*

"When a district is required to deadhead a conductor to another district for service out of the latter point, a foreign district conductor shall not be assigned unless all available local extra conductors have been assigned, . . ."

"RULE 42. Temporary Transfer . . ."

\* \* \* \* \*

"A conductor temporarily transferring to another district or returning to his home station following temporary transfer shall be considered a conductor of such district on the date of arrival. If he arrives in either district after the beginning of the signout period, he will not be considered for an assignment that signout day unless there are no extra conductors of the district available for assignment, including local conductors who may arrive in the district after the beginning of the signout period."

It is apparent from an examination of the record that Conductor Deal could not have gone from Birmingham to Atlanta under Rule 42 at the time he was furloughed for he had not, evidently, exercised his seniority right under Rule 42 at the prior time when Conductor Young, his junior, was temporarily transferred to the Atlanta District. It follows naturally, then, that the only way he could transfer to the Atlanta District after he had been furloughed was, under Rule 39, to exercise his displacement rights and those rights became effective when he, Deal, as a senior to Young chose to exercise them. Young at the time he was assigned to New York on February 3, was a member, on temporary transfer, of the extra board of the Atlanta District. Deal could not displace him on the extra board until Young had returned to Atlanta on February 5. Carrier has attempted to justify the assignment to Deal at Atlanta on February 4th under Rule 42 but under the circumstances in this case that simply cannot be done. Deal went to Atlanta under Rule 39 of the Agreement. His status was that merely of a foreign conductor on February 4th and under those circumstances Conductor Miller, an available extra conductor should have been assigned. Rules 38 and 39 of the Agreement have been violated.

**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 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 has been violated.

**AWARD**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty  
Executive Secretary**

Dated at Chicago, Illinois, this 4th day of May 1962.