

Award No. 10723

Docket No. PC-12334

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, 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 C. C. King, Atlanta District, that The Pullman Company violated Rules 25, 38 and 64 of the Agreement between The Pullman Company and its Conductors, when, on December 1, 1956:

1. Southern Railway train #47 was permitted to operate from Atlanta to Birmingham, with two Pullman cars operating in Lines 6868 and 6875, without the services of a Pullman Conductor.

2. Because of this violation we ask that Conductor King be credited and paid, under the provisions of Rule 21, for the trip Atlanta to Birmingham, on Southern train #47, and that he be credited and paid, under the applicable rules, for a deadhead trip Birmingham to Atlanta.

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 and relevant parts of the Rules which are directly applicable to this 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.

" . . . To adopt the practice of broadening or extending the terms of any instrument by a tribunal such as ours will only lead to confusion and uncertainty and ultimately to injustice and hardship to both employe and carrier. . . ."

In Award 8219 of the Third Division, the Board likened such practice on its part to rewriting the Agreement. The Board stated, under **OPINION OF BOARD**, in that Award, as follows:

"In view of our obvious lack of any authority to rewrite the Agreement, the claim must be denied."

In a similar opinion, rendered in Third Division Award 5079, the Board stated, under **OPINION OF BOARD**:

"This Board has consistently held by a long line of awards that the function of this Board is limited to the interpretation and application of agreements as agreed to between the parties. Award 1589. We are without authority to add to, take from, or write rules for the parties. Awards 871, 1230, 2612, 3407, 4763."

See also Third Division Awards 6291, 6365, 6595, 6833, 6828, 5994, 5500, 4763, 1248, 5864, 9198.

The Board held in Third Division Award 7362 that the burden of establishing facts sufficient to require the allowance of a claim is upon those who seek the allowances. In Award 7362, under **OPINION OF BOARD**, the Board stated:

"The burden of establishing facts sufficient to require the allowance of a claim (and proper language in the agreement covering the situations), is upon those who seek the allowances. . . ."

The record of the case at hand shows the Organization has failed to establish facts sufficient to show violation by Management of Rules 25, 38 and 64 or to require the allowance of the instant claim.

CONCLUSION

In this ex parte submission the Company has shown that it did not violate Rules 25, 38, 64 or any other rule of the Agreement. Additionally, the Company has shown that no rule of the Agreement gave to Conductor King the right to extra work arising in the Atlanta District or to payment under the circumstances of this case for work which he did not perform. Further, the Company has shown that, in effect, the Organization improperly is attempting to persuade the Board to extend the terms of the Memorandum of Understanding of December 20, 1950, to cover a situation which by its terms it does not cover and never was intended to cover. Finally, the Company has shown that awards of the National Railroad Adjustment Board support the Company's position in this dispute.

The claim in behalf of Conductor King 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 employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between the Order of Railway Conductors and Brakemen, Pullman System and The Pullman Company.

Southern train #47 arrived Atlanta 9:50 A.M. It departed 10:15, fifteen minutes late. The record shows that Conductor King arrived on #47.

Conductor Naish was supposed to report at 9:15. He did not report for duty. He did not notify management that he would not work as assigned.

Superintendent Devlin had the duties of platform man. He discovered that Naish had failed to report for duty, 3 to 5 minutes after the train arrived. He went aboard the train and started looking for Conductor King for the purpose of assigning the trip to him. There were no extra conductors available. At least 10 to 15 minutes later Superintendent Devlin went to the signout office and found that King had left. Conductor King did not leave early.

The facts in Award 3918 (Douglas) are similar.

There, as here, the train operated without a conductor. There, as here, a conductor was assigned and failed to work. There, as here, the Carrier made every reasonable effort to obtain a conductor to work.

The Petitioner alleges that Carrier was negligent in that it did not require King to remain on duty until relieved.

We are of the opinion that the Carrier did all that was reasonably possible to provide for the operation of a conductor on Southern train #47. We cannot say that Carrier's operating rules are not sufficient to reasonably insure the presence of a conductor.

The Carrier must do more than just assign a conductor to the train. It is our opinion that the Carrier must **do all reasonably possible** to provide for the operation of a train with a conductor when so required by the Agreement.

For the foregoing reasons, we believe there was no violation of the Agreement.

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 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 3rd day of August 1962.