

Award No. 10788

Docket No. PC-10890

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, 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. T. Huntemann, Washington District, that paragraphs (b) and (e) of Rule 38 of the Agreement between The Pullman Company and its Conductors were violated when:

1. On July 7, 1957, Conductor W. T. Huntemann, who had been assigned to PRR train 59-31-21 from Washington, D. C. to Indianapolis, Ind., with a reporting time of 3:30 P. M., was displaced by Conductor W. E. Bayley of the Seattle District.

2. Because of this violation we now ask that Conductor Huntemann be credited and paid for the service trip Washington to Indianapolis, and for a deadhead trip Indianapolis to Washington, under the provisions of the Memorandum of Understanding concerning Compensation for Wage Loss found on page 85 of the Agreement.

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 as though fully set out herein.

II.

For ready reference and convenience of the Board, the pertinent parts of Rule 38 which are directly applicable to this dispute, also the Memorandum of Understanding concerning Compensation for Wage Loss, found on page 85 of the Agreement, will be quoted below:

"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

operated on could not properly be classified as "indirect." The Board evaluated the Organization's interpretation of Rule 38 (e) as follows:

"It is the opinion of the Board that the route taken by Conductor Regan was not circuitous to the extent that the same can be properly classified as 'indirect' and prohibited by Rule 38 (e)."

Also, in Third Division denial Award 6009 (Fred W. Messmore, Referee) the Board noted that although the route on which the foreign district conductor was used was longer mileagewise than the route the Organization claimed was the direct route, the record showed that the conductor's arrival time at the home station by either route was the same, which condition is present in the case at hand. The Board stated, additionally, that in cases of this kind, a reasonable interpretation of the rules was required. On this point, the Board stated as follows:

"... We believe that a reasonable interpretation of the rule requires us to hold that when Conductor R. C. Lansberry deadheaded from Denver to San Antonio by way of Dallas, Dallas was an intermediate point on a direct route. Rule 38 (e) does not specify the most direct route, or the shortest direct route. The hour of arrival in any event would be the same as shown by the record. We believe under the circumstances that Rule 38, paragraph (e), was substantially complied with by the Carrier.

What is required is a reasonable interpretation of the rules in a case of this kind.

Further, we say that every case of this type must be decided from the factual situation developed therein."

In each of the cases cited above, the Board stated that each case of this type must be settled on its own merits on the factual situation developed therein. The Company submits that the facts involved in the case at hand and a reasonable interpretation of the rules require a denial award.

CONCLUSION

In this ex parte statement the Company has shown that the route on which Seattle Conductor Bayley was operated was a direct route toward the conductor's home station. Also, the Company has shown that Awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim that Conductor Huntemann should be credited and paid for a service trip Washington-Indianapolis and a deadhead trip, Indianapolis-Washington, under the Memorandum of Understanding Concerning Compensation for Wage Loss, 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: On July 7, 1957 Conductor W. T. Huntemann, Washington, D.C. District was properly assigned to an extra service trip

during the regular signout period, reporting for duty at 3:30 P. M. on the same day.

Conductor W. E. Bayley, Seattle District arrived Washington in extra service at 11:05 A. M. July 7, 1957.

Following Bayley's release from duty at 11:25 A. M. he was subject to assignment in service moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station, Seattle, as provided in Rule 38(e). The Washington District Office annulled Conductor Huntemann's assignment under the provision of Rule 38(b) and assigned Bayley to service on PRR train Washington to Indianapolis. The Company was unable to make contact with Conductor Huntemann prior to his reporting at 3:30 P.M., and he was paid 3:25 hours, called and not used.

The question at issue is whether or not the assignment given Seattle District Conductor Bayley at Washington, D.C., was on a direct route to his home station as contemplated by Rule 38(e) and the agreed upon questions and answers.

We quote Rule 38(e):

"(e) This Rule shall not operate to prohibit the use of a foreign district conductor out of a station in service moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station.

Q-1. What is the meaning of the word 'direct' as used in paragraph (e) of this Rule?

A-1. 'Direct' means a direct rail route between two given points.

Example 1: A St. Louis District conductor available in Chicago may be used on any railroad having a direct rail route or through Pullman service between these points.

Q-2. Shall it be permissible to use a foreign district conductor in service to or from an intermediate point which is on a direct rail route toward his home station?

A-2. Yes."

The Claimant admits on Page 7 of the record:

"Under Rule 38 (e) the Company is permitted to assign a foreign district conductor in service moving in a direct route toward his home station or a point within a radius of 50 miles of his home station."

"The Organization concedes that it would have been proper to have assigned Conductor Bayley from Washington to Pittsburgh only. (See Example 3 to Rule 38 (e). However, when Conductor Bayley was assigned to Indianapolis, the Agreement was violated."

The Claimant also admits Bayley was enroute from Washington D.C. to Seattle.

Petitioner however contends that the service trip between Washington and Indianapolis was not on a direct route, that Rule 38(e) was violated.

A claim was filed asking that Conductor Huntemann be credited and paid for the service trip Washington to Indianapolis and for a deadhead trip Indianapolis to Washington, under the provision of the Agreement between the parties.

Paragraph 38(e) refers to "A direct route" and not "the direct route".

It also is significant that Rule 38(e) does not make mileage the controlling factor in determining whether or not a route is a direct one. It does not list any absolute standards for determining what constitutes a direct route.

In Award 5763 involving the routing of a Boston District Conductor from Fort Worth, Texas to Boston, Massachusetts, via Chicago instead of via St. Louis, Missouri, some six per cent greater (116 miles in a trip of 2000 miles) this Division said:

"It is the opinion of the Board that the route taken by Conductor Regan was not circuitous to the extent that the same can be properly classified as 'indirect' and prohibited by Rule 38 (e)."

In Award No. 6009, involving a routing of a San Antonio District Conductor from Denver to San Antonio via Dallas instead of via Fort Worth, 4.3 per cent greater (46.3 miles in a trip of 1,083 miles) this Division said in denying the claim:

"We have taken cognizance of Award 5763, this Division, involving the same parties, cited by the Carrier, and also the case settled on the property, cited by the Employees, and the contentions of the parties in each case. It is apparent in both cases the mileage factor was taken into consideration in the application of Rule 38(e). While some controversy exists between the parties with reference to the percentage of mileage, that is, whether it is so significant in fact that it would make no particular difference insofar as the direct route is concerned, as contended for by the Carrier, or as contended for by the Employees where there must be no leeway in percentage of mileage.

As stated previously in the opinion, Rule 38 (e) contains none of the factors contended for by either of the parties in this case. We believe that a reasonable interpretation of the rule requires us to hold that when Conductor R. C. Lansberry deadheaded from Denver to San Antonio by way of Dallas, Dallas was an intermediate point on a direct route. Rule 38 (e) does not specify the most direct route, or the shortest direct route. The hour of arrival in any event would be the same as shown by the record. We believe under the circumstances that Rule 38, paragraph (e), was substantially complied with by the Carrier.

What is required is a reasonable interpretation of the rules in a case of this kind.

Further, we say that every case of this type must be decided from the factual situation developed therein.

For the reasons heretofore given, the claim should be denied."

In Award No. 6649, in sustaining the claim this Division said:

"The Carrier makes a very plausible argument to the effect that a direct route need not necessarily be the shortest route geographically, a contention that may be acknowledged as being correct, nevertheless, this Division has limited its application, and resolved the problem apparently on the basis of percentage of deviation from the most direct route. Respondent Carrier puts it this way, 'However, if the differences between the route and other routes to the conductor's home district are not significant in proportion to the length of the trip, the assignment is considered to be on a direct route to the conductor's home district and is given to him.'

The parties are agreed on the percentage of deviation in the and 49% respectively, which we think is significant in proportion and 49% respectively, which we think is 'significant in proportion' according to the Carrier's own theory and that this claim is good."

In the above Award 6649, the percentage of deviation was significant 15% by mileage and 49% on a hourly basis.

In the case before us, the mileage traveled by Conductor Bayley as shown by the map in the record from Washington, D.C. via Indianapolis to Seattle was 3272 miles. If Conductor Bayley had followed the route suggested by the Petitioner, from Washington, D.C. to Chicago via Pittsburgh and then Seattle, the mileage would have been 3168 miles, or 104 miles less than the mileage traveled by Conductor Bayley. This is 3.2% more mileage than the most direct route. If Conductor Bayley had been used in service only to Pittsburgh, at which point the Organization contends he should have been placed in deadhead service, Pittsburgh to Seattle, he would have arrived according to the Carrier's submission in Seattle on the same train he actually arrived on July 11, 1957.

There was no significant deviation from the most direct route, in the case before us and Rule 38 (e) was not 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 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 19th day of September 1962.