

Award No. 10895

Docket No. PC-12075

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, 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 Conductors C. D. Mee and W. A. Worley, Dallas District, that the Agreement between The Pullman Company and its Conductors was violated, with special reference to Rules 25 and 38, when:

1. On June 18, 1959, Conductors W. R. DuVall and E. S. Zachary, of the Ft. Worth District, were assigned to T&P special train from Dallas, Tex., to Detroit, Mich., and New York City respectively.

2. We contend that Rules 25 and 38 of the Agreement were violated, and because of this violation we ask that Conductor Mee be credited and paid for a service trip from Dallas to New York City, which trip was performed by Conductor DuVall, and for a deadhead trip from New York City back to Dallas.

3. We also ask that Conductor W. A. Worley be credited and paid for a service trip that was performed by Conductor Zachary from Dallas to Detroit, and for a deadhead trip Detroit back to Dallas.*

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of September 21, 1957, 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.

*Letter of appeal, through typographical error, read "Dallas back to Detroit."

CONCLUSION

In this ex parte submission the Company has shown that on June 18, 1959, the Company properly assigned Ft. Worth Conductors DuVall and Zachary to T&P special train from Ft. Worth to Detroit and New York City. The Company also has shown that the assignments were made as contemplated by Rules 38 (a) and 25 (c) and that if Dallas conductors had been assigned such assignment would have been in violation of Rules 38 and 25. Additionally, the Company has shown that neither Dallas conductors Mee and Worley nor any other conductors are entitled to be credited and paid for the trips in question. Finally, the Company has shown that awards of the Third Division, National Railroad Adjustment Board, support the Company in this dispute.

The claim of the Organization is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted to the employee or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends in this case that the Company violated Rules 25 and 38 when it assigned the involved work to the Fort Worth District Conductors instead of the Dallas District Conductors.

The Company relies upon Rule 64 (a) which provides that:

"Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, . . . except as provided in paragraph (c) of this Rule." (The paragraph (c) exception is not germane to the issue in this case.)

Your Board finds from this record that the Pullman cars involved in this case were properly, actually and physically placed "in service" at Fort Worth. That the Pullman cars were "in service" at Fort Worth and that Fort Worth District Conductors were assigned thereto in accordance with the applicable Agreement between the parties.

The Pullman Company placed the cars "in service" at the time and place designated by its customer, this Texas & Pacific Railway and the cars were "in service" at Fort Worth as directed by said Railway.

The facts in this case are clear and determinative of the issue.

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 Contract 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 7th day of November 1962.

**DISSENT OF LABOR MEMBER TO AWARD 10895,
DOCKET PC-12075**

Rule 38 upon which this claim is predicated states:

"All extra work of a district, . . . , shall be assigned to the extra conductors of **that** district . . ." (Emphasis ours.)

The majority completely ignored the basic issue in this dispute which was : Did the "work" involved arise in the Dallas District as claimed by the Petitioner, or in the Fort Worth District, as contended by the Company?

The Award does not answer this question.

Instead the Award merely attempts to justify Carrier's statement of the issue involved which the record discloses as follows:

"The issue in this dispute is whether on June 18, 1959, the Company properly assigned Ft. Worth Conductors W. R. DuVall and E. S. Zachary to cars **placed** in service at that point." (Emphasis ours.)

The Company's entire argument was based upon where the cars were **placed** in service, yet even the Rule relied upon by the Company makes no mention of **placing** cars in service. (Emphasis ours.)

Instead that rule (Rule 64(a)) states:

(a) Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, **in service** . . ." (Emphasis ours.)

The Award makes an inaccurate statement when it states.

"Your Board finds from this record that the Pullman cars involved in this case were properly, actually and physically **placed** 'in service' at Fort Worth. That the Pullman cars were

'in service' at Fort Worth and that Fort Worth District Conductors were assigned thereto in accordance with the applicable Agreement between the parties."

The record does show that the Company claimed the cars **were placed** "in service" at Fort Worth but it must be remembered that the rule relied upon simply states "in service" not "placed in service".

The record is also abundantly clear that:

1. No revenue passengers boarded the cars at Fort Worth.
2. The Fort Worth District Conductors (improperly assigned in accordance with Rule 38) were not even assigned in accordance with the regulations governing an "in service" trip but were assigned in accordance with the regulations governing a "deadhead trip". In other words, no period for the reception of passengers was allowed, only the uniform reporting time which is indicative that the Carrier was fully aware that no passengers were to be loaded nor were any revenue passengers loaded.
3. The train itself, a purported section of Train No. 2 departed at 3:30 P. M. or one hour and twenty-five minutes before Train No. 2 was scheduled to depart.
4. The original advice of the customer, the T & P Railroad, stated:

"Passengers will entrain Dallas."
5. The amended advice from customer stated:

"Equipment will depart Ft. Worth promptly at 3:30 P. M. arrive Dallas about 4:15 P. M. . . ."
(Emphasis ours.)
6. The record discloses that the first mention of the "placing" in service at Fort Worth is found in an advice from Pullman Clerk Williams to Pullman Supt. Weinbrenner dated July 28th. This date, it must be noted, is four (4) days after claim was filed.
7. The record further discloses that the first actual advice concerning the "placing" in service at Fort Worth was received by the Pullman Company from the customer, the T & P R R, in a letter dated **August 3** from the Passenger Traffic Manager. This date, it will be noted, was eight (8) days after the claim was filed and more than 45 days after the violation of the Agreement.

Thus it is clear, as Petitioner charges in the submissions that all the talk about "placing" in service is merely a cover-up by Carrier for their

error in assigning Ft. Worth District conductors to **equipment** in Ft. Worth when the cars actually and in reality were requested for "service" out of Dallas and were actually "in service" only from Dallas and therefore should have had Dallas District conductors assigned.

For the aforementioned reasons, among others, I dissent.

R. H. Hack, Labor Member