

Award No. 10994

Docket No. PC-12241

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, 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 Paul Hok, P. T. District, that the Agreement between The Pullman Company and its Conductors, effective September 21, 1957, was violated, with special reference to Rules 32 and 31, when:

1. On December 19, 1959 Conductor J. J. Gillespie, P.T. District, resigned from his regular assignment on PRR-RF&P-SAL trains 127-21-121-122-22-128, for accounting purposes designated as Line 2767, and the vacancy created by Conductor Gillespie's resignation was promptly bulletined in accordance with Rule 31 of the Agreement. However, under date of December 28, 1959, the company permitted Conductor Gillespie to withdraw his resignation, contrary to Rule 32 of the Agreement, and

2. Because of this violation we now ask that Conductor Hok, who was the senior conductor making application for the vacancy in Line 2767, be credited and paid for all trips lost, in accordance with the Memorandum of Understanding Concerning Compensation For Wage Loss (P. 99). The record to be checked to determine number of trips lost.

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.

II.

Prior to 3:15 P. M. on December 18, 1959, Conductor J. J. Gillespie, Penn. Terminal District, was regularly assigned in the conductor run on PRR-RF&P-SAL trains 127-21-121 and 122-22-128, designated as Line 2767, between New York City, N. Y. and St. Petersburg, Florida.

In Third Division Award 6365, the Board stated it was not authorized to add or detract a meaning, which meaning was clearly not the intention of the parties to the Agreement. In pertinent part the Board stated as follows:

"It is the duty of this Board to interpret the rules of the Agreements as they are made. We are not authorized to read into a rule, that which is not contained, or by an award add or detract a meaning to the Agreement which was clearly not the intention of the parties. Many awards have been made by this Board, on this subject, and we refer to only a few as affirming our position. See Awards 4439, 5864, 5971, 5977."

In Third Division Award 5079, the Board cited Award 2622, in which the Board set forth the principle that it is an elemental rule the parties should negotiate to make certain that which has been uncertain. In this connection the Board stated in Award 5079, as follows:

"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."

CONCLUSION

In this ex parte submission the Company has shown that it properly permitted Conductor Gillespie to withdraw his resignation from his position in Line 2767, effective December 28, 1959. Also, the Company has shown that there has been no violation of Rules 32 and 31 as alleged by the Organization.

Finally, the Company has shown that Awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim of the Organization 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: There is no dispute between the parties as to the facts from which this claim arises.

On December 18, 1959, regularly assigned Conductor J. J. Gillespie advised his Superintendent by written notice that he desired to resign from his regular assignment, which action is permissible under the provisions of Rule 32 of the Agreement effective September 21, 1957. Under the provisions of Rule 31 of the Agreement, and because of the resignation of Conductor Gillespie, a prompt Bulletin was posted for a bid on December 19, 1959, Bulletin 134.

Claimant, Conductor Hok, filed his application for this bulletined position, designated as Line 2767. On December 28, 1959, one day before the ten-day bulletin period, as required by Rule 31 of the Agreement, had been closed, Conductor Gillespie notified his Superintendent that he was

withdrawing his resignation as of that day. Carrier then, on the same day, cancelled the Bulletin Notice of Vacancy in the assignment herein involved.

Rule 32 of the Agreement permits a Conductor to resign from his regular assignment by giving a 15-day written notice, his resignation not becoming effective until the 15-day period had expired. That was done and the expiration date was January 2, 1960. Consequently, on December 28, 1959, the resignation not having yet become effective, Gillespie was still the regular incumbent of the position. Furthermore, the ten-day bulletin period required by Rule 31 had not yet closed and the five-day period for awarding the position to the successful bidder had not yet commenced.

It is the Petitioner's position that after a Conductor has submitted his resignation in writing as provided in Rule 32 and the resulting vacancy is by bulletin posted for bid as provided in Rule 31, that the Conductor is not then at liberty to withdraw his resignation as rights of other employees have intervened under Rule 37 of the Agreement.

It is conceded by the Petitioner that Conductor Gillespie had a right to resign under Rule 32 of the Agreement. At the time of his resignation he was still the regular incumbent of a regularly assigned position. An examination of the Agreement effective September 21, 1957, discloses nothing that prevents a Conductor from withdrawing his resignation nor the Company from accepting such withdrawal within the fifteen-day period required by Rule 31 before his resignation becomes effective; nor does an examination of the Agreement disclose any rule which prevents the Company from cancelling or withdrawing a bulletin before the ten-day period of posting required in Rule 31 has expired. (See Award 10710—Wilson)

This Board has no authority to supply rules where none exist regardless of whether, in this particular case, the conduct of Conductor Gillespie was reprehensible or not. Consequently, there being no rule, there could have been no violation of the same.

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 not been violated.

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 December 1962.