

Award No. 11071
Docket No. PC-12699

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ralph D. McMillen, 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 claims for and in behalf of Conductor R. L. Ferguson, Philadelphia District, that:

1. Under date of June 28, 1960, Conductor Ferguson reported in Philadelphia at 8:45 P. M. for his regular assignment Philadelphia to Pittsburgh. On June 29, at approximately 1:30 A. M., in Harrisburg, Conductor Ferguson was removed from his assignment and his assignment was blanked from Harrisburg to Pittsburgh, Pa.

2. We now ask that because of this violation Conductor Ferguson be credited and paid for the remainder of his assignment between Harrisburg and Pittsburgh.

We further hold that Rules 25 and 61 of the Agreement were violated by the Company.

Rule 15 and the Memorandum of Understanding Concerning Compensation for Wage Loss are also involved.

EMPLOYEES' STATEMENT OF FACTS:

I.

There is in full force and effect a collective bargaining Agreement, or Agreements, entered into by and between The Pullman Company, hereinafter referred to as Company or Management, and the Order of Railway Conductors and Brakemen, Pullman System, hereinafter referred to as Employees or Organization.

Copies of these Agreements are on file with this Division of the Adjustment Board and, by reference, included in this submission as though set out herein word for word.

heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in the claim before the Board are as follows: Line 6551, Philadelphia-Pittsburgh, as shown on the Operation of Conductors Form, is a 3-man operation, PRR trains 635-55, 60-602, Conductors report Philadelphia, 8:45 P. M. (first day) and are released from duty in Pittsburgh, 7:20 A. M. (second day). They report at Pittsburgh 8:15 P. M. the same day and are released, from duty, in Philadelphia, 7:30 A. M. (third day). Outbound, PRR trains 635-55 carry 5 Pullman cars, 3 New York-Chicago cars, 2 Philadelphia-Pittsburgh cars. Inbound, PRR train 60-602 carries 11 Pullman cars, except on Friday when the train carries 8 Pullman cars. Outbound, between Harrisburg and Pittsburgh, a Chicago District conductor is also on the train, in charge of cars of Line 6517. The same situation exists inbound, between Pittsburgh and Harrisburg, the Chicago District conductor who operates Line 6517 and the Philadelphia District conductor on Line 6551. The Philadelphia conductor in Line 6551, is the only conductor on PRR 602, Harrisburg, Philadelphia.

On June 29, 1960, Conductor O. H. Wentz, Philadelphia District who regularly operated in Line 6551, was en route Pittsburgh-Philadelphia on PRR train 602. Wentz was removed from his assignment, between Johnstown and Altoona, Pa., on account of being in an unsatisfactory physical condition, by the Passenger Train Master of the Pennsylvania Railroad. This action left PRR train 602 without a Pullman conductor between Harrisburg-Philadelphia. In a telephone conversation between the Pullman Night Agent and the Passenger Train Master it was arranged that in the emergency Philadelphia District Conductor R. L. Ferguson, one of the three conductors regularly assigned in Line 6551, who was en route to Pittsburgh on PRR train 635, having left Philadelphia the evening of June 28, would be detrained at Harrisburg and would be placed on PRR train 602. Upon his arrival at Harrisburg 12:10 A. M., June 29, Conductor Ferguson detrained from PRR train 635 and handled the cars on train 602 Harrisburg-Philadelphia. The Pullman cars which Conductor Ferguson was in charge of on PRR train 635 were handled to destination (Pittsburgh) by the Chicago District Pullman conductor who was in charge of the other cars on the same train.

The issue, as set forth by the Organization—"Did the Company violate Rules 25 and 61 when, on June 29, 1960, it blanked Conductor Ferguson's assignment on PRR train 55 between Harrisburg and Pittsburgh?"

The Organization claims the pertinent parts of the Rules involved are as follows:

"RULE 25. Basic Seniority Rights and Date. (a) 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.

"(b) No deductions shall be made from the seniority of conductors for time spent on authorized leaves of absence, furloughs, or sickness.

"(c) In any district, the right to perform all Pullman conductors' work arising therein, as established by past practice and custom,

shall belong exclusively to the conductors having seniority in such district, subject to the exceptions of these rules herein otherwise contained."

"RULE 15. Layovers in Regular Assignment. Specific layovers shall be prescribed in operating schedules for regular assignments."

"RULE 61. Posting 'Operation of Conductors Form' (Form 93.126), shall be posted in places accessible to those affected and a copy of each such form shall be furnished to the General Chairman of the Organization at the time posted. A run covered by an 'Operation of Conductors Form' (form 93.126) shall remain in effect until canceled by Bulletin."

"MEMORANDUM OF UNDERSTANDING CONCERNING COMPENSATION FOR WAGE LOSS.

* * * Similarly, it is understood that if a Pullman conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the Agreement, effective September 21, 1957, and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month."

The Company's position is that: "The issue in this dispute is whether the Company properly paid Conductor Ferguson for the period June 29- July 1, 1960."

The Company relies to a great extent on Rule 36 of the Agreement, text as follows:

"RULE 36. Continuance in Regular Assignment.

"A conductor operating in regular assignment shall not be used in service outside his assignment except in emergency and as provided in paragraph (d) of Rule 38.

"Q-1. May a conductor who is operating in regular assignment, who has missed his return trip at his opposite terminal, be used in service toward his home terminal as provided in Rule 38?

"A-1. Yes, provided the uniform release time has expired. However, he shall not be used in a regular assignment operated by the away-from-home district.

"Q-2. Shall a conductor who is operating in regular assignment, who arrives at his opposite terminal after the scheduled reporting time for his return (inbound) trip, be permitted to return in his regular assignment?

"A-2. Yes, provided the uniform release time for the outbound trip expires before departure of his train.

"Q-3. May a conductor who is operating in regular assignment be used out of his assignment at his opposite terminal on a train departing before his specified layover expires?

"A-3. No, except in an emergency."

The Company also cites Rule 9. Held for Service, which requires the Company to pay a regular conductor 6:50 hours for each 24 hour period, following his return to his home station when he is used outside his regular assignment. Conductor Ferguson was paid in conformance with Rule 9.

The fundamental issue in this case seems to be whether or not an emergency existed. If an emergency existed then the Company did not violate Rules 24 and 61, but if no emergency existed then the Organization's position is tenable.

The Organization does not agree with the Company's interpretation of Rule 36. They say—"We do agree that a regularly-assigned conductor may be used outside of his assignment under certain conditions. However, it does not mean that the Company has a right to remove a regularly-assigned conductor from his assignment, thus creating another emergency."

We can only conclude, that an emergency did exist.

The Company had only two alternatives in the emergency:

1. It could have permitted train 602 to continue on, Harrisburgh to Philadelphia, without the services of any conductor.
2. Remove Claimant from his assignment at Harrisburgh, and use him to protect the cars in service on train 602, Harrisburgh to Philadelphia, permitting the cars on train 635, which were in the Claimant's charge, to be handled by a conductor who was in charge of other cars on the same train.

In either event the Company would be exposed to a claim. If the Company had chosen the first alternative, rather than the second, the Organization could advance a claim that Rule 64 was violated, on the basis that more than one Pullman car was in service without a conductor.

It is our belief that the Company, in an emergency situation, has a broader latitude for judgment than it ordinarily possesses. See Awards 9394 (Hornbeck), 5766 (Smith), 10181 (Daley).

We find nothing vague or unique in the language of Rule 36. We confirm the statement in Award 9198 (Weston) "As this Board many times has had occasion to hold, we are required to apply the rules as they have been written * * * and we have no authority to add to or supplement these obligations by interpretation or otherwise."

We hold that Rule 36 does apply in this case, that an emergency did exist. This being our conclusion, then we must find Rule 24 and Rule 61 were 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 employes involved in this dispute are respectively Carrier and Employes 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 25th day of January, 1963.

Labor Member's Dissent to Award 11071—Docket PC-12699

Award 11071 is incorrect. The issue involved was:

"Did the Company violate Rules 25 and 61 when, on June 29, 1960 it blanked Conductor Ferguson's assignment on PRR train 55 between Harrisburg and Pittsburgh?"

The Award does not resolve this dispute. Rule 61 provides in part:

"... A run covered by an 'Operation of Conductor Form' (form 93.126) shall remain in effect until canceled by Bulletin."

Instead the Award attempts to justify Carrier's actions on the grounds that:

"The Company had only two alternatives in the emergency:

"1. It could have permitted train 602 to continue on, Harrisburgh to Philadelphia, without the services of any conductor.

"2. Remove Claimant from his assignment at Harrisburgh, and use him to protect the cars in service on train 602, Harrisburgh to Philadelphia, permitting the cars on train 635, which were in the Claimant's charge, to be handled by a conductor who was in charge of other cars on the same train.

"In either event the Company would be exposed to a claim. If the Company had chosen the first alternative, rather than the second, the Organization could advance a claim that Rule 64 was violated, on the basis that more than one Pullman car was in service without a conductor."

Although Carrier advanced the argument that they would have been liable for claims had they not acted as they did, this is pure speculation. This Board has consistently held that disputes should not be adjudicated on the basis of conjecture and speculation. (Awards 6647, 6917, 10007).

The Majority ignored the testimony of Carrier representative Dodds who stated:

"I will agree, Mr. Johnson, that Mr. Ferguson's run was not filled between Harrisburg and Pittsburgh. I further agree that there is no specific provision in the current working Agreement that provides for such a situation."

As an aftermath of Award 7009, an Agreement (concerning the blanking of assignments) was expressed in letter from Mr. H. R. Lary, Pullman Company, to the organization (copy to the Third Division) which has likewise been ignored.

Neither Rule 36 nor the emergency conditions applicable thereto should have been a part of this dispute. The intent and purpose of that Rule concerns the use of a regularly assigned conductor while on layover if an emergency (no extra conductors available) exists.

The Carrier relied on Rule 36 for the self-serving purpose of justifying its action in this case and the Majority was unfortunately and incorrectly influenced in holding that:

"We hold that Rule 36 does apply in this case, that an emergency did exist. This being our conclusion, then we must find Rule 24 (sic) and Rule 61 were not violated."

Reference in the Award to "Rule 24" and Rule 61, throughout, should read "Rule 25" and Rule 61 as appearing in claim.

The Award, despite much verbiage, does nothing toward resolving the question here involved and has no precedent value.

Dissent is hereby registered.

/s/ R. H. Hack

R. H. Hack
Labor Member