Award No. 11469
Docket No. PC-13246

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 T. V. Jones, Salt Lake City Agency, that The Pullman Company violated the rules of the Agreement between The Pullman Company and its Conductors, with special reference to Rule 38, when:

1. On February 21, 1961, it failed to properly assign Conductor Jones to a deadhead trip Salt Lake City to Ogden and a service trip Ogden to Chicago, on UP train 104-102.

Conductor W. E. Watson, Salt Lake City Agency, who was on furlough, was recalled and given this assignment.

2. Because of this violation, we now ask that Conductor Jones be credited and paid under the Memorandum of Understanding Concerning Compensation for Wage Loss, found on page 99 of the current Agreement, in the same amount that was paid to Conductor Watson, i.e., 49:10 hours.

Rules 39 and 40 are also involved in this dispute.

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. On this subject, see Third Division Awards 4304 and 7658, also First Division Award 15851.

For ready reference and convenience of the Board, pertinent parts of the rules which are directly applicable to this dispute are quoted:

of Rule 38. The Board has held in numerous Awards that when the language of a rule is plain as to its meaning it is not subject to construction. In Second Division Award 1474 (Carter) the Board stated, under **FINDINGS**, as follows:

> ". . . When the language of a rule is plain as to its meaning, it is not subject to construction. It will be enforced as made. This Board has no equitable powers, and, consequently, no authority to impose its ideas of justice and fairness in a matter that is plainly covered in the agreement by clear and concise language. We have no right to construe language which is so plain in its meaning as to be beyond interpretation. . . ."

Also, in Third Division Award 6291 (McMahon) the Board stated the principle it has no authority to modify or amend the provisions of working Agreements in any way. In that Award the Board stated, under **OPINION OF BOARD**, as follows:

> ". . . We are required in determining the rights of the parties to interpret the Regulations as they are written in the Agreement, and we have no authority to modify or amend the provisions in any way. This must be done only by negotiation between the parties. This has been held in numerous Awards by the Board, and we cite Nos. 5703, 2491 and 4439 as expressing the holding of the Board."

See, also, Third Division Awards 1248, 2622, 4763, 5079, 5500, 5864, 5994, 6365, 6595, 6828, 6833, 8219, 9108, 9198 and Fourth Division Award 759.

CONCLUSION

In this ex parte submission the Company has shown that Conductor Jones was not available under the terms of Rule 38 for assignment to train 1/104-102 departing Ogden February 21, 1961. Also, the Company has shown that no violation of Rule 38 or any other rule of the Agreement occurred in connection with the assignment given Conductor Watson on February 21, 1961. The Company also has shown that the instant claim, while without merit, is excessive. Additionally, the Company has shown that the Organization's arguments in support of its position in this dispute are unsound. Finally, the Company has shown that awards of the National Railroad Adjustment Board support the Company in this dispute.

The Organization's claim that Conductor Jones is entitled to be credited and paid 49:10 hours because of alleged violation of Rule 38 by the Company on February 21, 1961, 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 February 21, 1961, it became necessary to assign a Conductor. The Claimant was entitled to be assigned. The Carrier contends that he was assigned but was not available. The Petitioner contends that the Carrier was negligent in not giving the Claimant sufficient notice to report on time.

There is no evidence in the record that the Clerk knew prior to 8:15 A. M. that another conductor would have to be assigned. The Clerk called Claimant at 8:17 A. M. and again at 8:20 A. M., urging him to hurry. This does not sound as if he was trying to deprive the Claimant from receiving the assignment.

There is not sufficient evidence in the record to sustain a charge of negligence or bad faith. It must, therefore, follow that Claimant was not available for the assignment.

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 6th day of June 1963.

LABOR MEMBER'S DISSENT TO AWARD 11469, DOCKET PC-13246

Dissent is hereby registered to this completely illogical and shamefully erroneous Award.

R. H. Hack