

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald A. Rock, 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. R. Ball, Asheville Agency, that:

1. The Pullman Company violated Rules 25, 38 and 64 of the Agreement when on April 29, 1956 they failed to assign Conductor Ball to Southern Railway train #22 which operated with Pullman car PAYNE, Asheville, N.C., to Greensboro, N.C., without the services of a conductor.

2. We now ask that Conductor Ball be credited and paid no less than 6:50 hours for an extra service trip Asheville to Greensboro, and no less than 6:50 hours for a deadhead trip Greensboro to Asheville, under the provisions of Rule 23 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 the same as though fully set out herein.

For convenience of the Board, Rule 25 and pertinent parts of Rules 38 and 64 are quoted:

"RULE 25. Basic Seniority Date. 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.

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

OPINION OF BOARD: The controlling question in this dispute is whether the facts existing at Asheville at 1:05 P. M. on April 29, 1956 constituted an actual emergency of sufficient gravity to have relieved the Company from complying with Rule 64 (b) which reads as follows:

"RULE 64. Conductor and Optional Operations. (b) Management shall have the option of operating conductors, porters in charge, or attendants in charge, interchangeably, from time to time, on all trains carrying one Pullman car, either sleeping or parlor, in service; except with respect to certain conductor operations as specifically covered in the Memorandum of Understanding re-executed at Chicago, Illinois, December 20, 1950."

The record of the original hearing shows that J. C. Hoyle was a porter and that he was the porter assigned to Pullman car PAYNE which on April 28-29, 1956 operated in Special Service from Memphis to Greensboro. It was originally scheduled to operate on Southern train #28 from Knoxville to Spartanburg, via Asheville, and on Southern train #34 from Spartanburg to Greensboro. But since train #28 was running late out of Knoxville and car PAYNE might therefore miss connection with train #34, Southern Railway Company decided that it would remove car PAYNE from train #28 upon its arrival at Asheville and would attach it to and operate it on Southern train #22 from Asheville to Greensboro over a more direct route. The scheduled departure time of train #22 from Asheville is 11:25 A. M. but it was customarily held there pending the arrival of train #28. Train #28 arrived at Asheville at 1:05 P. M. and Mr. T. I. Walsh, the Company representative was then notified of the change which was to be made in the operation of car PAYNE. It thereupon became his duty to comply with 64(b). This, he did not do.

At 9:15 A. M. that day extra Conductor Ball arrived at Asheville on Southern #15. He reported to the Company office during the usual signout period, 9-10:00 A. M. He was available for service but was not called. There is nothing in the record to show that any attempt was made to call him. Mr. Walsh, for reasons unexplained, did not attend the hearing. The Company was aware of the need for a Conductor at 1:05 P. M. It took 32 minutes to switch car PAYNE from one train to another.

At 1:37 P. M., the Company permitted car PAYNE to depart Asheville on #22 and to operate thereon, Asheville to Greensboro, without having assigned either a Conductor or a porter in charge or an attendant in charge to operate thereon, as required by Rule 64(b). Porter Hoyle, who was on the car when it departed, was not a "Porter-in-charge".

The Company's only contention on the property in opposition to the claim was that "an emergency" existed at Asheville which precluded the Company from assigning a Conductor to #22 on the day in question. Since the claim of emergency is an affirmative defense, the Company had the burden of proving the existancy thereof. In our opinion, the Company failed to sustain that burden.

After carefully examining the entire record we have concluded that this claim should be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.