Award No. 11740
Docket No. PC-11413

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 L. R. Klein, Washington District, that:

1. On January 3, 1957, Conductor Klein was not given an assignment on PRR train 126 Washington, D. C., to New York City, N. Y. Instead, this trip was given to Conductor Groschelle, Washington District, who on that date had greater hours than Conductor Klein. This action by the Company violated Rule 38 of the Agreement.

2. We now ask that because of this violation Conductor Klein be given the same credit and pay Conductor Groschelle earned on this service trip Washington to New York, and also be paid for a deadhead service trip to New York to Washington, under the applicable rules 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 ready reference and convenience of the Board, the pertinent parts of Rule 38 directly applicable to this dispute are quoted: (Agreement effective January 1, 1951.)

"RULE 38. Operation of Extra Conductors.

(a) All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra con-

the Company prior to the closing of the district office. In this dispute the Organization argued that the assignment was not withheld a "reasonable time" before reporting time of the assignment. The facts in this case are as follows. The requirement for a conductor to operate Cleveland-Cincinnati arose in the Cleveland District approximately 8 hours (August 27, 1955) after the signout period and 4 hours prior to the time the night agent went off duty. The assignment carried a reporting time of 6:15 P. M., August 28. The night agent was aware that when the conductor on station duty (Conductor Borchert) had completed his tour of duty at 2:20 A. M., he would have the lowest credited and assessed hours. However, the night agent gave Conductor Henley the assignment at 11:15 P. M. In sustaining the claim in behalf of Borchert, the Board stated that Conductor Borchert was available and should have been given the assignment. The Board also pointed out the records showed it was the consistent procedure of the Company when the night agent went off duty at midnight to have any action required in behalf of The Pullman Company taken by the Cleveland Station Master. The Board also stated that in holding that Borchert should have been given the assignment it did not hold the the Company was required to continue its own representative on duty after midnight, but was interpreting Rule 38 "on the particular facts" of this situation as directed by Award 6621.

In the case at hand the Organization is ignoring the decisions of the Board as outlined above and is improperly contending that the Company is required to keep a night supervisor on duty past midnight and during the early morning hours to make emergency assignments arising prior to the time the district office is opened.

CONCLUSION

In this ex parte submission, The Company has shown that Management fully complied with the provisions of Rule 38 when on January 3, 1957, it assigned Conductor Groschelle to the emergency assignment on PRR train 126. Also, the Company has shown that neither the rules of the Agreement nor Awards of the Board contemplate that the Company maintain night supervisors on duty to make emergency assignments in the manner contended for by the Organization. The claim of the Organization is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic operational facts giving rise to the problem in this case together with the provisions of Rule 38 are set forth in the Submissions of the parties and will not here be repeated.

The information showing the necessity for the assignment of an Extra Pullman Conductor to service a trip from Washington to New York on PRR 126 which was scheduled to depart Washington at 8:45 A. M., was transmitted by the Washington Terminal Company to the Pullman Company by means of the station telautograph at 6:05 A. M., on January 3rd, 1957, but was neither read nor acted upon by the Company until 8:20 A. M., for the sole reason that the Company did not open its office until 8:00 A. M., which was five minutes after the scheduled departing time for PRR 126.

The fact that the Company did not make this information available to itself or to someone else designated by it so that appropriate action could be taken before 7:55 A. M., made it impossible, not only for Claimant who was

entitled to the assignment, but for every other Pullman Conductor in the Washington District, to be "available" within the meaning of the Rule.

Claimant was at his home on January 3rd and, insofar as anything that he could do, was "available" at all times mentioned here. Nevertheless, he was not called until 8:20 A. M., which made it impossible for him to travel from his home to the station by 8:45, the time of departure. If he had been called at 7:50, just 30 minutes sooner, he would have had time to drive to the station in time to have made the trip to which he was entitled under Section C of Rule 38.

There is no evidence in the record to show that the Company's non-compliance with the Rule was caused or brought about by circumstances or conditions beyond its control. Nor is there any evidence in the record to show that the Company made any attempt before 8:00 A. M., to determine whether any scheduled movements had been changed during the night which would require the services of an Extra Conductor. This is not to say that the Rule requires the Company to keep its offices open 24 hours each day, but it is to say that the Company is required to comply with the provisions of the Rule. This, it did not do. It assigned the trip to a Conductor not entitled thereto, and seeks to defend its action because of a claimed emergency which in our opinion did not exist. The Rule was violated and the claim should, therefore, 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1963.