

Award No. 11795
Docket No. PC-13976

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, 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 A. R. Balmanno, Penn. Terminal District, that:

1. Under date of August 3, 1962, The Pullman Company violated the Agreement between The Pullman Company and its Conductors, with especial reference to Rule 38.

2. Because of this violation we now ask that Conductor Balmanno be credited and paid for an extra service movement from Chicago, Ill., to Belton, Mont., and a deadhead trip Belton back to New York.

EMPLOYEES' STATEMENT OF FACTS: 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.

I.

During the established signout period on August 2, 1962, and in accordance with Paragraph (c) of Rule 38, Penn. Terminal District Conductor A. R. Balmanno was issued an assignment by H. E. Worley, Superintendent, The Pullman Company, to report to Penn. Terminal Station at 4:15 P.M., depart at 5:00 P.M. on August 2, 1962, to perform service as second conductor on PRR train 29, handling cars to the rear diner, including Cars RT 3 and RT 4 with the Ridgeway Tour Party en route to Glacier Park; stay with the two cars at Chicago during layover, then CB&Q train 47 to Belton unless turning over to the regular conductor on CB&Q train at Chicago, the destination of the trip being Belton, Mont.

The Operation of Conductors Form (93.126), dated June 30, 1962, which was in effect on August 2, 1962, shows that PRR train 29 carries 9 regular sleeping cars in service. On August 2, there were 2 extra cars occupied by the Ridgeway Tour Party handled on train 29, making a total of 11 cars.

cordance with the provisions of Rule 38 of the Agreement. Also the Company has shown that there was no service requirement that would justify the assignment of a second conductor out of Chicago to Glacier Park, Montana, and that the claim in behalf of Balmanno is therefore excessive. Finally, the Company has shown that the Organization has not established facts sufficient to warrant the allowance of its claim.

The claim in behalf of Conductor Balmanno is without merit and should be denied.

All data submitted herewith in support of the Company's position heretofore have been submitted in substance to the employe or his representative and made a part of this hearing.

(Exhibits not reproduced.)

OPINION OF BOARD: The following facts are not in dispute: During the sign-out period on August 2, 1962, Claimant Conductor Balmanno was given an assignment to duty form to report at 4:15 P. M. in Pennsylvania Station, New York, and perform the following service:

"2nd conductor on PRR Train No. 29 handling cars to rear of diner — including Cars RT3 - RT4 with the Ridgeway Tour party enroute to Glacier Park. Stay with these two cars at Chicago during layover, thence CB&Q train No. 47 to Belton, unless your turn over to the regular conductor on CB&Q train No. 47 at Chicago."

Upon arrival at Chicago on August 3, the two cars in tour service were consolidated with the cars regularly handled by the conductor on Train 47 and Claimant remained in charge thereof until the regular conductor of Train 47 reported for duty at 8:15 P. M., that date; he was released from duty at 8:35 P. M. Claimant was then deadheaded back to his home district in New York and credited with ten hours fifteen minutes for the deadhead trip.

On August 3, 1962, St. Paul District Conductor Wright was given an assignment to duty form to report at 8:15 P. M. in Chicago for CB&Q 2/47 to St. Paul handling lines 551 and 552. The Carrier cancelled operation of 2/47 and St. Paul District Conductor Wright was permitted to handle cars of Lines 551 and 552 as far as St. Paul.

Part 2 of the Claim makes the following request:

"2. Because of this violation we now ask that Conductor Balmanno be credited and paid for an extra service movement from Chicago, Illinois to Belton, Montana, and a deadhead trip Belton to New York."

In pertinent part the Agreement between the parties provides as follows:

"It is understood that Management has the right to annul an extra conductor's assignment under the following conditions:

(1) When assigned in lieu of a regularly assigned conductor who has been laying off and the regularly-assigned conductor reports for his assignment before scheduled reporting time.

(2) When the cars in his charge are consolidated with cars of another train or trains, that are in charge of a Pullman conductor, or Pullman conductors, except an extra conductor's assignment shall

not be annulled when the cars in his charge are consolidated with the cars of another train that are in charge of a Pullman conductor and, by such consolidation, the need for an additional conductor is created.

(3) When a foreign district conductor is available for service as provided in paragraph (e) of this Rule."

* * * * *

"(e) This rule shall not operate to prohibit the use of a foreign district conductor out of a station in service moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station.

"* * * However, a foreign district conductor shall not displace a local extra conductor who has received an assignment."

The CB&Q Railroad, instead of operating the two cars Conductor Wright was assigned to on 2/47, carried them to St. Paul on 1/47 and Wright was permitted to go on 1/47 as second (helper) Conductor thereby displacing Claimant Balmanno, although Balmanno's destination as set forth in his assignment to duty slip was Belton, Montana.

The Petitioner maintains that when Conductor Wright's assignment on 2/47 failed to materialize, the assignment should have been cancelled as provided in Rule 38(b)5. Claimant Balmanno was entitled to continue on, as the need for a second (helper) conductor on 1/47 was created, as contemplated in Rule 38(b)2. The Carrier takes the position that there was no violation of the Agreement and that the Claim on behalf of Conductor Balmanno is without merit.

The daily posted record of extra conductors indicates that during the regular signout period on August 3, Conductor Wright was assigned to CB&Q Train 47 extra, (2/47). That assignment did not materialize inasmuch as the two Pullman cars scheduled to be attached to that train, were attached instead to Regular No. 47. Therefore, under the provisions of Rule 38(b)5, his assignment should have been cancelled. Claimant Balmanno's assignment to duty indicates that the destination of his trip was Belton, Montana via P.R.R. Train No. 29 and CB&Q Train No. 47. The Petitioner offers as proof of the fact that the consolidation of the special cars in tour service with the cars of CB&Q train No. 47 created a need for a second conductor the fact that the Carrier did assign a helper to train 47. In view of the situation described above it is the contention of the Petitioner that a second conductor was needed on Train 47 and indeed such second helper was assigned to the train.

Authority in support of the Petitioner's contention is found in Special Board No. 199 (Ferguson) interpretation which in pertinent part is quoted below:

"* * * The original intention of the paragraph stating:

'However, a foreign district conductor shall not displace a local extra conductor who has received an assignment'

"Was expected to be applied particularly where the two conductors meet or are brought together. The one who has received an assignment by virtue of his contractual seniority rights arising at his home station

should not be bumped en route by a chance arrival of another who is heading for his home station. * * * The man who has received an assignment should not be displaced before completion of this assignment."

The claim of the Petitioner finds support in the above interpretation and appears to be logical and reasonable. However, there is no showing that the Agreement provides that Claimant is entitled to receive pay twice. The Claimant has already been paid for deadheading back from Chicago to New York. The claim is sustained only as to payment for amount lost from Chicago to Belton, Montana and return to Chicago.

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 Carrier did violate the Agreement.

AWARD

Claim sustained in accordance with the above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.