Award No. 12093
Docket No. PC-14072

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen claims for and in behalf of Conductor D. R. Hockenbury that under date of June 24, 1962, The Milwaukee Road violated the Agreement between The Milwaukee Road and its Parlor Car Conductors, with especial reference to Rules 22 and 26, when:

1. Under date of June 24, 1962, it failed to operate a parlor car conductor on train 2, which train is covered by an Operation of Conductors Form, from Minneapolis, Minn., to Chicago, Ill.

2. Because of this violation we now ask that Conductor Hockenbury be credited and paid not less than 1⅜ days.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of October 16, 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.

II.

Under date of June 24, 1962, the regularly assigned parlor car conductor to train 2, which train is covered by an Operation of Conductors Form, was instructed not to make his return trip from Minneapolis to Chicago on train 2, but to operate on train 6 from Minneapolis to Chicago.

Train 2, covered by an Operation of Conductors Form, operated from Minneapolis to Chicago without the services of a parlor car conductor, in violation of paragraphs (a) and (e) of Rule 22.

In giving consideration to the fact that on June 24, 1962, there were no extra parlor car conductors available for service and this includes claimant extra parlor car conductor Hockenbury, who was not available for service on June 24, 1962, by reason of his laying off that day due to illness which had caused him to reject on that day an extra board assignment which he had accepted the day previous, and in further consideration of the fact that Claimant Hockenbury was not a regularly assigned parlor car conductor, but to the contrary, was an extra parlor car conductor who was not available for the service claimed on June 24, 1962 nor for any other service on that date, it is the Carrier's position that under the provisions of aforequoted Memorandum of Agreement dated April 5, 1955, claimant extra parlor car conductor Hockenbury is not a proper claimant, and it is our further position that there is absolutely no agreement basis for the payment being claimed in behalf of extra parlor car conductor Hockenbury in view of which the Carrier respectfully requests that the claim be denied.

In other words, the Organization has designated extra parlor car conductor Hockenbury as the claimant in this case under the provisions of Memorandum of Agreement dated April 5, 1955, but under said Agreement, when, as in the instant case, no extra parlor car conductors are available, then only regularly assigned parlor car conductors may be designated to receive the payment involved, and inasmuch as Claimant Hockenbury is not a regularly assigned conductor, but to the contrary, is an extra parlor car conductor, who, in addition, was not available on the June 24, 1962, claim date, the Carrier submits he is not a proper claimant.

The Carrier submits that it is readily apparent that by the claim which they have presented in behalf of Claimant, extra parlor car conductor Hockenbury, the employes are attempting to secure through the medium of a Board Award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

It is, as stated, the Carrier's position that there is absolutely no basis for the instant claim, and we respectfully request that it be denied.

All data contained herein has been presented to the employes and made a part of the question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in issue. The Claimant, Hockbury, an extra board parlor car conductor, accepted an extra board assignment, but, after having accepted it, notified the Carrier that he was ill and would not be available. There were no other extra parlor conductors available that day and the Carrier operated without a conductor on this assignment.

The Carrier concedes that it violated the Agreement, but urges that Hockenbury is not a proper Claimant because he was an extra, not a regularly-assigned conductor, as required by the Memorandum of Agreement of April 5, 1955, the pertinent part of which follows:

> "When an extra parlor car conductor is not available, payment (at the straight-time rate) for such trip shall be made in addition

to all other earnings for the month **to the regularly-assigned parlor car conductor designated by the local chairman."**
(Emphasis ours.)

The Employes concede that Hockenbury was an extra and not a regularly-assigned conductor. They argue, however, that the Carrier has no interest in who receives the money, since it is required to pay it only once. This argument does not meet the requirements of the Memorandum. There is an obvious difference between regularly-assigned conductors and extras.

The Carrier contracted to pay any of the former nominated by the Employes. We cannot presume that the difference between the two is immaterial and that the Carrier has no interest in seeing that a regularly-scheduled conductor receives this payment rather than an extra.

The Employes' other argument is that Hockenbury should receive the money as a matter of equity. This Board cannot decide claims on the basis of equity, but only on the Law and the Agreements between the parties.

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, but that the remedy asked is improper.

AWARD

The Claim is sustained as to No. 1, but is denied as to No. 2.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.