

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 I. H. Collins, New York District, that the Agreement between The Pullman Company and its Conductors was violated on April 5, 1963, with especial reference to Rules 42, 25, and 38, when:

1. On April 5, 1963, Conductor Collins was not permitted, in accordance with the terms of Rule 42 (e), to exercise his seniority rights over junior conductors who were on temporary transfer to the Penn. Terminal District.

2. Because of this violation, we now ask that Conductor Collins be paid in accordance with the Memorandum of Understanding Concerning Compensation for Wage Loss just as though he had been permitted to exercise his seniority rights in accordance with Rule 42 (e), the record to be checked to determine each trip that Conductor Collins would have received under the applicable rules of the Agreement.

EMPLOYES' 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.

On April 5, 1963, the following conductors from other districts, who are junior to Conductor Collins, were on temporary transfer to the Penn. Terminal District:

| | | Seniority Date |
|------------------|-----------------------|----------------|
| I. H. Collins | New York District | 8/30/43 |
| H. Fried | Hoboken Agency | 9/ 6/43 |
| G. L. Carroll | Albany Agency | 9/20/43 |
| T. A. Harrop | Philadelphia District | 10/22/44 |
| W. G. Hallenbeck | Hoboken Agency | 11/12/45 |

CONCLUSION

In this ex parte submission the Company has shown that the moment Conductor Squires displaced Conductor Collins on temporary transfer, the latter no longer was a conductor on temporary transfer and of necessity he reverted to the status of a furloughed conductor in the New York District. The Company has shown that under the rules, with particular reference to Rule 39, Conductor Collins had the right to remain on temporary transfer in the Penn. Terminal District only so long as there was need for his services in that district or until he was displaced therefrom by a senior New York District conductor. The displacement occurred on April 5, 1963 and terminated Collins' position as a temporarily transferred conductor. The Company also has shown that the Organization has brought forward an exaggerated claim in behalf of Conductor Collins, which claim is not in accord with the Memorandum of Understanding Concerning Compensation for Wage Loss because of its excessive nature. Finally, the Company has shown that awards of the National Railroad Adjustment Board require the Organization to bring forward facts sufficient to support its claim and proper language in the Agreement covering the situation.

The Organization's claim in behalf of Conductor Collins is excessive and without merit; it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, Conductor I. H. Collins, New York District, bid for and was assigned to a temporary transfer to the Pennsylvania Terminal District. His seniority date in his home district was August 30, 1943. On April 5, 1963 there were four Conductors also assigned to Pennsylvania Terminal District from Hoboken, Albany and Philadelphia Districts, all four of these Conductors being junior to Conductor Collins.

On April 5, 1963, Conductor F. N. Squires, New York District, signified his desire under the provisions of Rule 39 to displace Claimant from his temporary assignment at Pennsylvania Terminal. Upon being notified that he was being displaced by Conductor Squires, Claimant elected to exercise his seniority in accordance with Rule 42 (e) of the Agreement but he was not permitted to do so.

In pertinent part those clauses of the Agreement that require interpretation are as follows:

"Rule 39: Where conductors are on temporary transfer from a district in which it becomes necessary to furlough conductors, the furloughing shall be made on a seniority basis as provided in Rule 40 and men, senior to those on temporary transfer who are to be furloughed shall be given the privilege of displacing the junior conductor on temporary transfer."

"Rule 42 (e): When conductors are transferred to other districts to work on seasonal runs or temporary assignments, they shall retain their seniority in the district from which transferred and shall rank as junior to all conductors in the district to which transferred. They shall not accumulate seniority in the district to which transferred, but shall exercise seniority rights among conductors so transferred according to their seniority dates in their home districts."

The application of Rule 40 is not involved in the instant case.

The Carrier's position as set forth in its ex parte submission is as follows:

"There is no provision in the Agreement that provides for the senior conductor of a district to displace a junior conductor on temporary transfer from another district."

"Thus Conductor Collins' displacement rights were necessarily confined to displacing a junior New York District conductor on temporary transfer to the Pennsylvania Terminal District. Since there was no New York District conductor junior to Conductor Collins on temporary transfer to the Pennsylvania Terminal District, Collins had no displacement rights whatsoever when he was displaced by Conductor Squires and he immediately resumed a furlough status in the New York District on April 5, 1963."

There is a Memorandum of Understanding Concerning Compensation For Wage Loss which appears on page 99 of the current Agreement which states, inter alia, as follows:

"* * * Similarly, it is understood that if a Pullman Conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the Agreement, * * * and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month. * * *"

It would appear elementary that seniority and displacement rights apply to all employees covered by the Agreement, conditioned only by their length of service. It is not disputed that Conductor Collins measured his seniority from his home district as dating back to August 30, 1943. It is also not in dispute that after Conductor Squires, Collins had greater seniority than any of the other four Conductors also assigned to Pennsylvania Terminal District. Once Squires displaced Collins, under the language of Rule 42 (e) and Rule 39, Collins was clearly entitled to exercise his seniority rights to displace the next junior conductor under him. When the Carrier denied Collins this right it violated its Agreement.

Nowhere in the Agreement is it stated that only one man, top man in seniority standing, may exercise seniority and thereafter no other displacement rights may be exercised. Rule 42 (e), in its especially pertinent part, states:

"* * * They shall not accumulate seniority in the district to which transferred, but shall exercise seniority rights among conductors so transferred according to their seniority dates in their home districts."

Note that the quoted language speaks in the plural, viz. — "they * * * shall exercise seniority rights among conductors * * * according to their seniority dates in their home districts." This language speaks for itself and clearly indicates that it was contemplated by the parties signatory to the Agreement that more than one conductor shall exercise seniority rights according to their seniority dates in their home districts.

Collins was senior in his home district to all employees except Squires. He was entitled to displace the conductor junior to him. Any other interpretation would be hypertechnical and would do violence to the basic concept of

seniority, viz:—that an employe with longer service has superior rights in job retention than one who is junior to him. It should be further pointed out the Carrier did not further document its contention as to its interpretation of language in question by pointing out a past practice in support thereof. Apparently, there is no such past practice.

The Carrier next contends that under the Memorandum of Understanding of September 21, 1957 its liability, if any, is confined to "the trip he lost" and not to a succession of trips. The record is not clear as to whether or not the Claimant was denied one trip or more than one. However, the rule of law applicable to the instant situation is that where a Pullman conductor presents a claim that he was not given an assignment to which he was entitled he has been thereby damaged; his damages consist of the pay he would have earned but for his having been wrongfully denied the said assignment. Thus the Carrier's liability is to be measured by the number of trips Claimant lost. Each such instance, if there were more than one, thus becomes "the trip lost." This would be the reasonable interpretation of the sense of this provision of the Memorandum.

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 in accordance with Opinion.

AWARD

The claim is sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.

DISSENT TO AWARD NO. 12370, DOCKET NO. PC-14315

Award 12370 is based upon the majority's confusion concerning undisputed facts of record and the scope of seniority rights under the rules.

Rule 25 (a) confines seniority to one specific district, viz., the district where a conductor's name appears on the seniority roster, such as the following:

Pennsylvania Terminal
New York
Hoboken
Philadelphia
Albany

Rule 39 grants conductors displacement rights over conductors on temporary transfer to other districts. It is specific in limiting the displacement rights of the senior conductor to a particular conductor who is on temporary transfer from the same district, viz., "the junior conductor on temporary transfer." Rule 39 also is specific in making displacement by a senior conductor from his home district one of the conditions precedent to the junior conductor's remaining on temporary transfer.

Rule 42 (a) grants to The Pullman Company the unilateral right to select the districts from which conductors will be temporarily transferred, and the number to be transferred from each such district. Rule 42 (e) permits conductors so transferred to exercise their home district seniority among themselves in bidding for assignments in the district to which temporarily transferred, but precludes their accumulating any seniority therein. Obviously, Rule 42 (e) cannot be interpreted in such a way as to destroy any parts of either Rule 39 or Rule 42 (a), or in such a way as to make any parts of the latter two rules superfluous.

It is undisputed in the record that, on April 5, 1963, Claimant Conductor Collins was the junior conductor of the five conductors on temporary transfer to the Pennsylvania Terminal District from the New York District, and that Conductor Squires was senior to all five. Accordingly, the majority's holding that "Collins was senior in his home district to all employees except Squires" is in palpable error. Its further holding that "He (Collins) was entitled to displace the conductor junior to him" is meaningless because, being the junior conductor and the only conductor under Rule 39 whom Squires admittedly could displace, there was no conductor junior to Collins on temporary transfer to the Pennsylvania Terminal District from the New York District whom he could displace.

The majority also is confused concerning its reference to "Nowhere in the Agreement is it stated that only one man, top man in seniority standing, may exercise seniority and thereafter no other displacement rights may be exercised." Squires being the senior or top man and Collins being the junior or bottom man, and Rule 39 undisputedly permitting Squires to displace only Collins, the junior or bottom man, it would seem elementary that the men in between were not affected and that there was no one from the New York District whom Collins could displace because the latter was the junior or bottom man in seniority standing on temporary transfer from that district.

In addition, the majority's holding that "It is also not in dispute that after Conductor Squires, Collins had greater seniority than any of the other four Conductors also assigned to Pennsylvania Terminal District" further evidences its confusion. Neither Collins nor Squires had accumulated any seniority in the Pennsylvania Terminal District and so could not be senior to any conductors regularly assigned thereto. Furthermore, after Squires, Collins was also junior to the other four conductors on temporary transfer to the Pennsylvania Terminal District from the New York District, for which reason Collins was the only conductor whom Squires was permitted to displace under Rule 39.

While, on April 5, 1963, there also were two conductors from the Hoboken District and one conductor from each of the Philadelphia and Albany Districts

on temporary transfer to the Pennsylvania Terminal District, all of whom had less seniority in their respective districts than Collins had in the New York District, no provision of the Agreement grants displacement rights to conductors of one district over conductors of another district under any circumstances. Petitioner's position in the instant case was that Collins should have been allowed "to displace one of the temporary transferred conductors **not** from the New York District." It is significant that neither the claim nor this Award designates which of the four such conductors Claimant Collins desired to displace.

If conductors of one district were permitted to displace junior conductors from other districts on temporary transfer, as contended for by Petitioner herein and as Carrier denies, the senior conductor could displace the most junior conductor in the first place, regardless of the district from which such junior conductor was transferred, thus eliminating an otherwise unnecessary displacement without disturbing the extra board or affecting the conductors on temporary transfer thereto other than the one conductor displaced. Obviously the parties did not intend the rules to be interpreted as requiring vain and useless acts.

As this same majority held in Award 12367, adopted this same date, but disregarded in this instant case:

"Where two different interpretations can be made of language in a contract that interpretation will be applied which comports best with reason and logic."

The Carrier's position in this instant case is both reasonable and logical because for this Division to interpret Rule 42 (e) as permitting Collins to displace any of the four conductors "not from the New York District," as contended for by Petitioner herein, would place an absurd interpretation thereon which was not intended by the parties inasmuch as it would destroy —

1. that part of Rule 42 (a) which granted Carrier the unilateral prerogative to select two conductors from the Hoboken District and one each from the Philadelphia Districts for transfer to the Pennsylvania Terminal District, and

2. that part of Rule 39 which restricted the senior conductor's displacement rights, and that part thereof which made being displaced by a senior conductor one of the conditions precedent to Conductor Collins' remaining at work on temporary transfer to the Pennsylvania Terminal District.

In Award 2572, this Division held:

"It can hardly be supposed that the parties contemplated that one rule could be used to destroy another."

For the foregoing reasons, among others, Award 12370 is in error and we dissent.

W. H. Castle
D. S. Dugan
P. C. Carter
T. F. Strunck
G. C. White