

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 C. W. White, Albany Agency, that the rules of the Agreement between The Pullman Company and its Conductors were violated, with especial reference to Rule 38, when:

1. Under date of August 1, 1962, Conductor White was removed from his assignment which was destined to Atlanta, Ga., at Greensboro, N. C.

2. Because of this violation we now ask that Conductor White be credited and paid for the remainder of an extra service trip Greensboro to Atlanta, and for a deadhead trip Atlanta back to Greensboro.

The Memorandum of Understanding Concerning Compensation for Wage Loss is also involved.

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.

Conductor C. W. White holds seniority in the Albany, N. Y., Agency. His seniority date is June 10, 1943.

Under date of July 30, 1962, Conductor White was issued an Assignment to Duty Slip to report to Port Henry, N. Y., at 8:45 P. M., for an extra road service trip to Atlanta, Ga.

Conductor White reported for this assignment as per instructions. He performed the assignment from Port Henry to Greensboro, N. C. Upon arrival at Greensboro, N. C., at 12:05 A. M., August 1, 1962, Conductor White

the provisions of paragraph 2 of Rule 38 (b) plainly would have permitted the annulment of Conductor White's assignment at Salisbury, N. C., and that the annulment at Greensboro was the result of the initial intention of the Southern Railway to consolidate the cars of the special movement at that point. Thus, since the consolidation actually occurred at Salisbury, as the Company has shown, the Company cannot be held accountable for a service assignment beyond that point. Finally, the Company has shown that Awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The material facts are not in dispute. Claimant, an extra conductor, was given a special service assignment from Port Henry, New York, to Atlanta, Georgia. His assignment was annulled at Greensboro, North Carolina, and he was directed to deadhead back to his home district (Albany, New York). The cars in his charge were consolidated with those of another train not at Greensboro, as the Company had anticipated, but at Salisbury, North Carolina, some fifty miles distant. The movement out of Greensboro to Salisbury was made without a conductor.

The Company concedes the Agreement was violated when Claimant's assignment was annulled at Greensboro and made a bona fide offer to settle the dispute by paying Claimant for the service trip from Greensboro to Salisbury and the deadhead trip back to Greensboro in addition to the compensation already paid him. The offer was rejected by the Employees.

The sole issue before the Board under the foregoing set of facts is whether the Company's offer constitutes a proper measure of the amount due Claimant for the admitted breach of the Agreement.

We think it does. Claimant's rights flow from and are limited to what is provided by the Agreement. Under Rule 38 thereof, an extra conductor's assignment may properly be annulled by the Company ". . . When the cars in his charge are consolidated with cars of another train. . . ." It is a fact that in this case, the consolidation took place at Salisbury and that a conductor was in charge of the consolidated movement out of there. Had Claimant not been removed at Greensboro, his assignment, nevertheless, would have been annulled at Salisbury when his cars were consolidated with those of a train in charge of another conductor. At that point the Company acted in accordance with Rule 38 (b) and the breach was effectively healed. Thereafter, it could no longer be held liable either for violation of the Agreement or for any damages due Claimant. The proper function of the Board in cases of this kind is to award the Claimant damages sufficient to make him whole. Put another way, a Claimant is entitled to receive what he would have been paid under the Agreement had there been no breach. Here, the Claimant would have been paid for the service trip to Salisbury and the deadhead trip back to Greensboro, had he not been improperly removed at the latter point.

Awards cited by Petitioner are distinguishable on their facts or do not go to the precise issue here presented.

In view of the foregoing, the Board finds the claim is excessive and that Claimant should be paid in accordance with the offer of settlement hereinabove set forth.

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 Agreement was violated in accordance with Opinion.

AWARD

Claim disposed of in accordance with Opinion and Findings.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.