Award No. 12592
Docket No. PC-14359

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, 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 W. M. Fleming, Tampa District, that Rules 6, 13, 22, 25, and 38 (b) of the Agreement between The Pullman Company and its Conductors were violated when:

1. Under date of October 26, 1962, Conductor Fleming was released from a round trip movement St. Petersburg, Fla.-New York City-St. Petersburg, Fla. In New York, at 12:35 P.M., he was immediately instructed to report back at 12:35 P.M. and continue the assignment for the round trip, i.e., back to St. Petersburg. After reporting back for the return trip, New York to St. Petersburg, and remaining on the assignment for 5:30 hours, or until 6:05 P.M., October 26, 1962, the Company instructed him to vacate the assignment.

2. Because of this violation, we now ask that Conductor Fleming be credited and paid 5:55 hours, the amount of time he would have earned had the Company complied with the 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.

Some time prior to October 25, 1962, the St. Petersburg Quarterback and Clearwater Touchdown Clubs made arrangements with Mr. F. L. Wiggins, General Passenger Agent, Seaboard Air Line Railroad Company, St. Petersburg, Fla., for a special movement consisting of 12 cars, to be used by the St. Petersburg Quarterback and Clearwater Touchdown Clubs, St. Petersburg to New York City and return. The 12 cars consisted of 1 baggage dormitory car, 1 dining car, 6 full sleeping cars, and 4 combination sleeping-lounge

the Awards of the National Adjustment Board place upon the Organization in this dispute the obligation to bring forth facts sufficient to require the allowance of its claim, which facts are not present.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was the Conductor on a special train of 12 cars, to be used as a special train, from St. Petersburg, Fla., to New York City and return. The cars were operated on a per diem basis, i.e., passengers paying for the entire space in the cars for the round trip.

This special service movement departed from St. Petersburg on October 25, 1962 and returned on October 29, 1962. The Claimant arrived in New York City on October 26, at 12:15 P. M. and was released at 12:35 P. M., at which time he attempted to turn in trip diagrams for the cars in his charge as provided for in the instructions to conductors. The Receiving Cashier in Pennsylvania Terminal would not accept the diagrams as they had not been completed with the information to be obtained on the return trip. Subsequently, the Complainant was told by the Superintendent to go out to the yards and stay with the cars. Some 5 hours later the Complainant was told not to stay with the cars and he returned to Pennsylvania Station at 6:05 P. M. On October 28 he was assigned to report at Pennsylvania Station and return to St. Petersburg on a special train which included the 8 per diem cars that he handled from St. Petersburg to New York.

The two claims arose as a result of the failure of the Carrier to assign the Claimant on a round trip basis rather than a single trip basis. This latter assignment caused the release from duty of the Claimant at 12:35 P. M., October 26, 1962 in New York City. If the Claimant was assigned on a round trip basis he would have been required to remain with the cars while they were occupied by passengers or possessions while in service.

The following Rules have been alleged to have been violated, 6, 13, 22, 25 and 38 (b). It was the contention of the Complainant that he was erroneously considered to have been assigned St. Petersburg, Florida to New York City rather than, on a round trip basis, St. Petersburg, Florida and return. It was further alleged that the single, or one way assignment was in violation of Rule 38 (b). The assignment to duty form states St. Petersburg to New York, is in conflict with the service assignment Form 93.1188, which indicates the destination as St. Petersburg, Florida.

The Claimant alleges a further violation of Rule 13, when Carrier released him from service in New York City at 12:35 P. M. on October 26, 1962 when the cars were occupied by passengers or possessions. He denies that the cars were empty of Passengers or possessions. He was informed by Carrier representatives to remain with the cars and guard the possessions from 12:35 P. M. to 6:05 P. M. for which period he was paid for at the station time rate. This assignment was in violation of Rule 10 as his pay rate should have been determined under Rule 6. He was furthermore never officially assigned to this duty, as the work belongs to terminal employes, but was just paid at this rate.

The Carrier's contentions may be summarized as follows:

1. The Carrier had the right to assign the Claimant on a single trip or on a round trip basis.

2. That the cars were taken out of service in New York City, passengers left the train, taking with them their possessions and the cars were locked and parked.

3. Other employes were released from service for example, the porters.

4. There was no work for the Complainant to perform while the cars were parked.

5. The Complainant was compensated for all work performed by him.

6. No rules of the current Agreement were violated.

The question to be resolved is: Was the manner in which Claimant was assigned to service in violation of the Agreement?

The question presented in this dispute has been before this Board in Awards 3759, 9176 and 10307. Although the facts vary to some degree in each particular case the principle enunciated remains the same. In the cited Awards it has been held that: The Carrier, under the current Rules, must assign a conductor to parked cars when they are occupied by passengers or possessions. An examination of the circumstances found in Emergency Board No. 139 reveals that the Carrier sought to change the Rules requiring the assignment of a conductor where cars are parked and occupied by passengers or possessions. After some discussion, on the Rule change at that hearing, the Carrier's proposal to make the assignment of a conductor discretionary where the cars were parked, being switched or en route was withdrawn and the rules remained as they were prior to the submission at that Board hearing.

An examination of the record before us reveals some inconsistencies. The Assignment To Duty form states, ". . . To perform the following service Deadhead to St. Petersburg via Bus — Protect SAL Special Train to New York per form 93.1188". This latter form states, "Leaving St. Petersburg, Fla. Date: Oct. 25th-'62, Time 1:00 P.M. . . . Arriving St. Petersburg, Fla. Date: Oct. 29th-'62, Time 6:25 P.M. . . ." Upon arrival in New York the Complainant attempted to turn in his diagrams of the trip to the Cashier, who declined them as the return trip was not completed. The signout clerk told him to catch the subway and go to the Yards and stay with the cars. The Assistant Superintendent said to the Claimant, "This form reads St. Petersburg to St. Petersburg, and you should have been scheduled accordingly, I want you to catch the subway and go out and stay with these cars". Then some 5 hours after he had boarded the cars, and was looking after the passengers' possessions, he was instructed by another Assistant Superintendent not to remain with the cars after being told by the same person to be careful and guard the property.

The only conclusion one can draw from these facts is that the officials of the Carrier were of the opinion that the Claimant was assigned on a round trip basis or should have been and also that he should remain with the cars. If we examine the work assignment form it incorporates by reference all the information contained in the Service Assignment form No. 93.1188. Both forms should be considered together in an effort to give them a meaning. In support of an interpretation we should consider how this work was done in

the past. The record states past practice and custom prevailed. Then referring to a similar trip from St. Petersburg to New York in 1959, ". . . . That particular trip was signed out on a round trip basis. Likewise, I was paid on that basis." This statement by the Local Chairman was not denied, nor was the comments and actions of the Carrier officials.

Thus we can conclude from the conduct of the Carrier officials and the uncontroverted statement of the Local Chairman that past practice and custom had been to assign this work on a round trip basis.

A question has also been raised: Were the cars in service? Our answer is yes. The Carrier says no passengers were on the cars, nor did passengers have access to the cars during the interval they were in New York. However, we cannot lose sight of the fact that the cars were being paid for on a per diem basis and the passengers could have had access to them if they desired. Furthermore, they couldn't be used for any other purpose but parked. The cars were not in use but in service.

Another question has been raised: Were any personal effects of the passengers left on the Cars? Our answer is yes. Card tables, folding camp chairs and beverage supplies are personal effects within the meaning of Rule 13. We believe the Rule applies to personal effects, as anything of value belonging to passengers.

An examination of the Rules alleged in the claim to have been violated reveals that Rule 38 (a) was violated by assigning the Claimant, without an assignment slip to perform station duty, and pay him at that rate, from 12:35 P. M. to 6:05 P. M. This work is under the jurisdiction of the Pennsylvania Terminal District and the work should have been performed by employes coming under that district. In this situation the Carrier had to apply this rate in order not to recognize the round trip assignment.

Rule 64, not alleged in the claim was discussed in the submission and states in its pertinent parts:

"RULE 64

> Conductor and Optional Operations. (a) Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlor, in service, . . ."

It is our opinion that if a car is being paid for, revenue producing, reserved for a group of passengers and only that group can use the car, the car is in service. In the facts before us the cars were in service without a conductor which is a violation of Rule 64.

"RULE 6 — Regular and Extra Service

> Time for regular and extra service . . . shall be credited from time required to report for duty at the uniform reporting time until released at the uniform release time, subject to the provisions of Rules 13, 14, and 23."

The Claimant was not credited with time from St. Petersburg to St. Petersburg less rest deductions, as provided in Rule 13. Thus this failure to credit pay as required was a violation of Rule 6.

"RULE 13 — Rest Periods En Route

* * * * *

"An exception to the uniform release time will be made in connection with a round trip in extra road service **where conductor is not released** because car or cars are occupied by passengers or possessions." (Emphasis ours.)

Rule 13, makes provision for the retaining of a conductor in service under circumstances as before us. Referring to a round trip in extra road service **"where conductor is not released".** (Emphasis ours.) The parties negotiated this Rule 13. Why did the parties exempt a conductor from the release from service requirement? The answer is supplied by the parties. In this situation the conductor is not released from assignment. The parties to this agreement knew it at the time of writing this agreement and no change is evident in the Rules. If he was released and should not have been released the Rule is violated.

The Carrier in its reply to the contentions held concerning the above Rule holds: That the above provision in Rule 13, gives the Carrier the option to release or not release the Conductor in such round trip service. However, the Rule doesn't say, "he may be released," or that if his services are needed or not needed the Carrier has the right to hold him in service or release him. The Rule says under certain type service the release time doesn't apply because in that type service he is not released.

Thus we are of the opinion that this Rule was placed in the agreement to provide for situations that are presently before us.

Rules 38 (b) provides:

"(b) Extra conductors shall be furnished an assignment slip showing time and place required to report for duty, also destination. . . ."

We are of the opinion that this Rule was violated. The assignment to duty form named New York per form 93.1188 as the destination. Form 93.1188 addressed to the Claimant states leaving and arriving St. Petersburg, Fla. The Carrier officials in New York considered the Claimant to be assigned on a round trip basis. Thus if the Company officials were in error about the Claimants destination how could the Claimant possibly know what it was. The assignment to duty form was ambiguous and didn't show his proper destination without reference to form 93.1188. Thus reading both forms together the assignment was on a round trip basis and erroneously canceled at 6:05 P. M., October 26, 1962.

The Carrier raises the following question: If the destination of the trip was New York and so designated there was no violation of the Rules? However, the facts prove otherwise. The service assignment slip, No. 93.1188 designated the trip to St. Petersburg and return. It was in fact a round trip regardless of what it might be called. When such assignment of the Claimant was not properly made, Rule 38 (b) was violated. When the Claimant arrived at New York City, the Rules provided that he remain with the train, which he was so ordered to do until 6:05 P. M. He was not relieved from service at 12:35 P. M. when he attempted to turn in the diagrams. If the

Carrier's contentions were to be upheld the diagrams should have been accepted and Claimant released from service at 12:35 P. M. Such release from service was not done. He was told to return to his train by the Carrier's Superintendent. This interpretation of the Rules by the Carrier's Superintendent has not been denied or explained by the Superintendent.

Thus we conclude that Rule 38 (b) was violated.

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 2nd day of June 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12592, DOCKET PC-14359

(Referee J. Kane)

Award 12592 is in serious error.

The majority herein stated:

> "The Claimant was the conductor on a special train of 12 cars, to be used as a special train, from St. Petersburg, Fla., to New York City and return. * * * " (Emphasis ours.)

On the Assignment to Duty Slip, Claimant was instructed to report to Tampa at 10:15 A. M., depart at 10:30 A. M., deadhead by bus from Tampa to St. Petersburg where he would protect special movement of twelve Pullman cars from St. Petersburg to New York City. The destination of the trip was shown on the Signout Slip as New York, in accordance with Rule 38(e), which reads:

"RULE 38 (e) — Operation of Extra Conductors

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."

In the instant case, Claimant was a foreign district conductor in New York and the service was moving in a direct route toward his home station, as the term **direct route** is defined in Rule 38(e), supra. **Claimant was not assigned on a round trip basis because the Company did not require his services in New York City during the time the cars laid over at that point on a non-occupancy basis.**

The majority states that the question to be resolved is:

"* * * Was the manner in which Claimant was assigned to service in violation of the Agreement?

The question presented in this dispute has been before this Board in Awards No. 3759, 9176 and 10307. Although the facts vary to some degree in each particular case the principle enunciated remains the same. * * *"

Awards 3759, 9176 and **10307** have no bearing on the instant case since they related to cases where the scheduling of **regular operations** of the Company were concerned. Whereas, this case is concerned with a **special service movement.** In **Award 3756,** the cars were part of the "Exposition Flyer" destination to Chicago during the time "while they were in Denver" which was a terminal where Pullman conductors changed off.

In **Award 9176,** Carrier required the Pullman conductor to be relieved from duty when passengers were permitted to occupy Line 4098 beyond the scheduled arrival time.

In **Award 10307** the cars in question were occupied during the layover at Charlotte.

In the instant case, the record is clear that this was a **special service movement** from St. Petersburg to New York City. The passengers detrained in New York upon arrival on October 26th and removed all of their personal effects from the cars. The cars in question were placed in storage in the Sunnyside Yard in New York. Certain provisions and equipment were placed in the two lounge cars, which were padlocked. Therefore, there is no rule in the Agreement for signing Claimant out in Tampa in such a manner as to retain him in service during the layover interval in New York, **when in Carrier's judgment his services were not needed.**

The majority also states:

"A question has also been raised: Were the cars in service? Our answer is yes. The Carrier says no passengers were on the cars, nor did passengers have access to the cars during the interval they were in New York. However, we cannot lose sight of the fact that the cars were being paid for on a per diem basis and the passengers could have had access to them if they desired. Furthermore, they couldn't be used for any other purpose but parked. The cars were not in use but in service."

Rule 64 (a) provides:

"Pullman conductors shall be operated on all trains while carrying, at the same time, more than one Pullman car, either sleeping or parlors, in service, except as provided in paragraph (c) of this Rule."

When Rule 64 (a) is applicable, the cars are in service and are being carried on a train. In the instant case, the cars in special service, upon arrival in New York were not in service during their layover in New York. It is therefore hard to comprehend how the majority could interpret Rule 64 (a), supra, as follows:

" * * * if a car is being paid for, revenue producing, reserved for a group of passengers and only that group can use the car, the car is in service. * * * "

It is also difficult to understand how the majority could interpret Rule 13 as follows: " * * * card tables, folding camp chairs and beverage supplies are personal effects within the meaning of Rule 13. We believe the Rule applies to personal effects, as anything of value belonging to passengers. * * * "

Passengers' possessions, as referred to in Rule 13, which permits an exception to the uniform release time in connection with a round trip in extra service, does not comprehend anything other than passengers' baggage, clothing, or other personal effects. Items carried on cars for the refreshment or entertainment of passengers enroute cannot logically be considered as comprehended by the provision in Rule 13. Furthermore, there is nothing in the rule that requires the assignment of a conductor or the continuance of a conductor's assignment when passengers' possessions were not left on the cars.

For the reasons shown, among many others, Award 12592 is in error and we dissent.

R. E. Black
W. F. Euker
R. A. DeRossett
G. L. Naylor
W. M. Roberts