

Award No. 13033
Docket No. PC-14559

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, 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 Conductors J. T. Kennedy, Chicago District, that the Agreement between The Pullman Company and its Conductors was violated on May 24, 1963, with especial reference to Rule 38, when:

1. Conductor Kennedy was not given the assignment on PRR trains 28-55 from Chicago to New York and return, which assignment was given to Conductor F. V. Houser.

2. Because of this violation, we now ask that Conductor Kennedy be credited and paid under the Memorandum of Understanding Concerning Compensation for Wage Loss just as though he had been properly assigned to trains 28-55, with a reporting time of 3:15 P. M., May 25.

Rules 6 and 21 are also involved.

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.

Extra Conductor J. T. Kennedy arrived at the I.C. Station in Chicago, in deadhead service, on Soo Line Train 4, at 9:00 A. M., May 24, 1963. He was released at the I.C. Station in accordance with the uniform release time, i.e., 9:15 A. M., same day.

In accordance with instructions, Conductor Kennedy, prior to his release, deposited his reports and Assignment to Duty Slip at the I.C. Station. Soo Line Train 4 was scheduled to arrive in Chicago at 8:35 A. M., but actually arrived at 9:00 A. M., or 25 minutes late.

The signout period in the Chicago District, as provided in Rule 38 (c), is from 11:30 A. M. to 1:30 P. M., or for a period of 2:00 hours.

Further, in the hearing the Organization did not present a written statement from Claimant Kennedy. These two steps were obvious ones, and the fact the Organization took neither step is a pronounced weakness in that position.

The Company on the other hand presented signout records and presented the signout clerk in person for examination and cross-examination. The signout clerk gave detailed testimony as to the effort made on May 24, 1963 to determine whether or not Claimant Kennedy was available for assignment on May 24, 1963 (Exhibit A, pp. 8-14). At the conclusion of the examination of the signout clerk by the representative of Management, the representative of the Organization made no effort whatsoever to cross-examine the witness who was excused from the hearing.

Further, on page 16 of the Company's Exhibit A it is noted that the representative of Management stated as follows:

"... It has been shown Conductor Kennedy was not available as that term is interpreted in Rule 38 since he could not be contacted for assignment despite the repeated attempts made to assign him. There is no doubt the Company made every reasonable and possible effort to fill the assignment to New York in keeping with its contractual obligations."

Following this statement by the representative of Management, the Organization made no attempt to refute the assertion that Conductor Kennedy was not available on May 24, 1963.

Having found no violation of Rule 38, which the Organization alleges especially involved, the Company also finds no violation of **Rule 6. Regular and Extra Service** and **Rule 21. Regular Assignments—Part Time** of the Agreement. In a case of this kind the burden of establishing facts sufficient to require the allowance of a claim is upon the Organization. The record shows a pronounced failure by the Organization to meet the burden of proof which is on it with respect to Rule 38 of the Agreement. The claim in this case amounts to no more than the allegation that the contract was violated. The claim is not evidence, and the Organization must bring forward the essential facts necessary to support its claim, which it has not accomplished in this case. (See Award 7362 (Larkin) and Award 5976 (Messmore), both of the Third Division.)

CONCLUSION

The Company has shown in this case that the signout clerk of the Chicago District made repeated efforts to contact Claimant Kennedy for signout purpose before, during and after the signout period on May 24, 1963. Also, the Company has shown that Rule 38 has not been violated as alleged by the Organization. Further, the Company has shown that the Organization has failed to bring forward facts sufficient to require the allowance of the claim.

On the basis of the facts set down in the record, the claim in behalf of Conductor Kennedy is without merit and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In the instant case, the following facts are undisputed: Claimant, Conductor Kennedy arrived in Chicago after performing a special service trip from Chicago, Illinois, to Superior, Wisconsin, and return,

May 22 to 24, 1963, arriving in Chicago at 9:00 A. M. on May 24 and Claimant was released from duty at 9:15 A. M. On the basis of 136:40 estimated hours for the month up to May 24, Claimant was placed in the first position on the list of extra conductors to be contacted for assignment on that date. The signout period in the Chicago District, as provided for in Rule 38 (c) of the effective Agreement is from 11:30 A. M. to 1:30 P. M. for a period of two hours.

It is the contention of the Carrier, supported by a statement by the signout clerk on duty at a hearing on September 26, 1963, that the signout clerk on duty on May 24 telephoned Conductor Kennedy's home at 11:18 A. M., 12 minutes before the signout period began, to obtain his exact number of hours for signout purposes but received no answer, that he made a second attempt to call the Claimant with the same result; that during the signout period two attempts were made to telephone him—one at 11:40 A. M. and again 11:43 A. M.—to contact him for assignment; that having received no answer on either occasion, the signout clerk considered the Claimant was unavailable for assignment on May 24 and proceeded to assign another conductor to PRR trains 28-55, from Chicago to New York, departing Chicago May 25.

It is alleged by the Petitioner that Conductor Kennedy left the IC Station shortly after he was released and went home; that there were no telephone calls after he arrived home; that in giving the assignment to another Conductor the Carrier violated the Agreement. It is the position of the Petitioner that even though the signout clerk may have telephoned the Claimant's home during the signout period, as claimed, that he should have made a greater effort to contact him. The Petitioner urges that the identical issue presented here has already been adjudicated by this Board in Award 3845—Yeager.

Carrier contends that the real issue in this dispute is as to whether Conductor Kennedy was available for an extra service assignment on May 24, 1963, inasmuch as the signout clerk was unable to reach him by telephone during the signout period.

Rule 38 (c) provides in part, as follows: "Unassigned local conductors who are in their home stations will be available during the signout period until assigned" and also provides: "A regular signout period shall be established in each district, at which time assignments shall be made for a succeeding 24-hour period. Assignments shall be made by Management as early as it reasonably possible during the signout period." (Emphasis ours.)

Petitioner relies quite strongly on Award 3845—Yeager, which contains the following statement: "In the light of the reciprocal obligations of the Agreement it appears not unreasonable to require that, **Todd being available**, the Carrier under the circumstances should have used greater diligence in an effort to extend the call." (Emphasis ours.)

It is quite apparent that the Conductor Todd "being available", was a condition precedent to the holding in that award—it being based on the fact that he was available. There were statements by Conductor Todd in that record which would justify a finding of his availability.

The burden of proof rests with the Petitioner in this case to establish that Conductor Kennedy was available within the meaning of Rule 38 (c). All there is in this record is a "hearsay" assertion by the Local Chairman. There is nothing to establish when the Claimant arrived at home from the IC Station. There is no statement or declaration anywhere in the record,

either written or oral, by the Claimant, Conductor Kennedy. While this Board grants considerable latitude in the reception of types of evidence to support a claim nevertheless we cannot base our conclusion on mere allegations, assertions or pure "hearsay" without any attempt made to produce any competent evidence.

As was set forth in Award 9261 — Hornbeck:

"It certainly is no longer necessary to cite Awards in support of the proposition that the party which makes a Claim must offer proof to support it.

No informality in procedure, which properly is indulged by the Board in the presentation and consideration of Claims, will remove the necessity of proof of essentials material to the establishment of a favorable Award."

See also Award 3523 — Carter; Award 8065 — McCoy; Award 10783 — Mitchell.

The burden of establishing facts sufficient to require allowance of this claim rests on the Petitioner. Petitioner has failed to sustain this burden.

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 Employee involved in this dispute are respectively Carrier and Employee 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1964.