

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, 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 T. R. Ball, Asheville Agency, that:

1. The Agreement between The Pullman Company and its Conductors was violated, with especial reference to Rules 40, 36 and 38 when, on January 13, 1964, Conductor Ball was not recalled from furlough in accordance with the rules and given an extra service assignment on Sou. train 16, Asheville, N. C. to Washington, D. C., which assignment was given to regularly-assigned Asheville Agency Conductor C. P. Luther.

2. We now ask that Conductor Ball be credited and paid the same amount Conductor Luther earned, i.e., 39:30 hours, because of this violation.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, and amendments thereto, revised January 1, 1964, 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 January 13, 1964, the Asheville Agency had two (2) extra conductor requirements. The first requirement was to report in Asheville at 1:55 P.M. for an extra road service trip on Sou trains 16-38 Asheville to Washington. The second assignment was to report in Asheville at 10:50 A.M., January 14, 1964, for a deadhead trip Asheville to Winston Salem, N. C., to perform ten (10) round trips in the conductor run on Sou trains 16-21, for accounting purposes designated at Line 6857, between Winston Salem and Greensboro, N. C. and, upon completion of the 10 round trips, return to Asheville in deadhead service.

The conductors' signout period in Asheville is from 12:30 P.M. to 1:0 P.M. The signout day begins at 1:01 P.M. one day and ends 1:00 P.M. the succeeding day.

In its claim to the Board the Organization cites Rule 36. Continuance in Regular Assignment as having been violated, the pertinent part of which rule reads as follows:

"A conductor operating in regular assignment shall not be used in service outside his assignment except in emergency . . ."

There is no question that assignment of a conductor to the extra service trip leaving Asheville the afternoon of January 13 was necessary under the Agreement. Since there was no available extra or furloughed conductor in the Agency, there obviously was no violation of Rule 36 in the use of the services of a regular conductor on layover.

The Organization also cites Rule 38 as having been violated on the date in question. Rule 38 is titled Operation of Extra Conductors and the part pertinent to this dispute reads as follows:

"RULE 38. (a) All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra conductors of that district when available, . . ."

The Company does not dispute the fact that the assignment in question was extra work but the Company emphatically denies that Conductor Ball was available to perform the extra work in question. Since the Company covered the extra work by assignment of Conductor Luther, no violation of Rule 38 occurred.

In the hearing the local chairman referred to Award 8684 as applicable to the facts in the instant case. An examination of Award 8684 shows that it is totally inapplicable inasmuch as the Award applies only to extra conductors who are operating on the extra board of a district or agency and does not apply to furloughed conductors at a point such as Asheville.

The Company's procedure in this case was correct under the facts as set forth in the record, and Conductor Ball has no valid claim.

The claim lacks support of the rules of the Agreement, is without merit, and should be denied. (Exhibits not reproduced)

OPINION OF BOARD: The Claimant here in is a furloughed Conductor who was used for occasional assignments out of the Asheville Agency of the Carrier. On January 13, 1964, at 9:30 A.M., an extra conductor requirement arose in the Asheville Agency for service on Southern train No. 16 with a reporting time of 1:55 P.M. and a departure time of 2:25 P.M., but the Claimant was not called.

The Organization contends that under the current Agreement it was the duty of the Carrier to tender the assignment to the Claimant, and does not controvert the contention of the Carrier that on January 5, 1964, the Claimant orally advised the signout clerk at Atlanta that he would not be available for service unless he had two or three days' notice.

The issue here is: Did such oral instructions by the Claimant confer upon the signout clerk the authority to pass up a call to the Claimant? The answer must be in the negative because we can find nothing in the current agreement

or in the record that relieves the Carrier of the duty to tender to the Claimant the assignment in the absence of written instructions from the Claimant waiving the right to recall. In the circumstances found a sustaining award is indicated.

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 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 28th day of May 1965.