

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Arthur Stark, 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 Chicago District Conductor A. J. Johnson, that the Agreement between The Pullman Company and its Conductors was violated, with special reference to Rules 25 and 64, when:

1. On July 14, 1964, SP Train 3, carrying two or more Pullman cars in service, was allowed to depart from El Paso, Texas, without the services of a Pullman conductor.

2. Because of this violation, we now ask that Conductor Johnson, who was in El Paso and available to perform the service on SP Train 3, be compensated for a service trip El Paso, Texas, to Los Angeles, California, plus a deadhead trip Los Angeles back to El Paso, in accordance with the terms of the Agreement.

Rules 6, 21, 7, 22, 36 and The Preamble are also involved.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, and amendments thereto, bearing the effective date of September 21, 1957, 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.

Prior to April 22, 1964, New Orleans District conductors were assigned to and operated the conductor run on SP Trains 1 and 2 between New Orleans, La., and Los Angeles, Calif. For accounting purposes, the run is designated as Line 3549.

Also, prior to April 22, Chicago District conductors were assigned to and operated the conductor run on RI and SP Trains 3 and 4 between Chicago and Los Angeles. For accounting purposes, the run is designated as Line 229.

On April 22, the Southern Pacific Railway Company consolidated SP Trains 1 and 3 and 2 and 4 between El Paso and Los Angeles and Los Angeles and El Paso.

his decision on the claim, in which he denied the claim in behalf of Conductor Johnson but stated that he was willing to make adjustment to an El Paso conductor to be named by the local chairman for the unprotected portion of the trip on train Nos. 1-3 between El Paso and Yuma, Ariz., at which latter point the train was intercepted by a Los Angeles conductor and the cars handled by him from Yuma to Los Angeles. A copy of Superintendent Brewer's decision is attached as Exhibit B.

General Chairman A. G. Wise appealed the decision of Superintendent Brewer to the Company's Appeals Officer in letter dated November 24, 1964. General Chairman Wise ignored the proffered adjustment in behalf of an El Paso conductor as made by Superintendent Brewer and set forth that Conductor A. J. Johnson should be credited and paid for a service trip El Paso-Los Angeles and a deadhead trip Los Angeles-El Paso. A copy of General Chairman Wise's letter of appeal is attached as Exhibit C.

In letter dated January 4, 1965, the Company's Appeals Officer referred to conference held with the General Chairman on December 22, concerning claim filed in behalf of Conductor Johnson and stated it was his opinion the rules of the Agreement had not been violated. Further, he stated that since it is recognized that a section of SP train No. 3 departed for Los Angeles, July 14, and operated without a Pullman conductor as far as Yuma, Ariz., he was reiterating the offer of Superintendent Brewer to make an adjustment to any El Paso conductor named by the Organization. The Appeals Officer pointed out that the Company's offer of adjustment had been declined by the Organization in the conference on appeal and, therefore, the Organization's appeal of the claim was denied. Copy of the Appeals Officer's denial decision is attached as Exhibit D.

The Organization progressed the claim on appeal to the Third Division, National Railroad Adjustment Board, in letter dated February 15, 1965 (Exhibit E).

(Exhibits not reproduced.)

OPINION OF BOARD: Effective July 13, 1964 New Orleans District conductors were assigned to SP Train 1, New Orleans to El Paso, and to SP Trains 1-3 El Paso to Los Angeles. Chicago District conductors were assigned to RI-SP Train 3, Chicago to El Paso, and were instructed to transfer their reports and duties, at El Paso, to the SP Train 1-3 conductor, who continued on to Los Angeles. (Prior to this date the Southern Pacific had operated two trains to Los Angeles each day, one from New Orleans, the other from Chicago. When these were consolidated at El Paso, effective July 13, only one conductor was required to handle Pullman cars from El Paso to Los Angeles.)

The incident giving rise to this grievance occurred on July 14, 1964 when RI-SP Train 3, Chicago to El Paso, was late, arriving in El Paso after SP Train 1 had departed for Los Angeles. The Los Angeles-bound Pullman cars from RI-SP Train 3 were operated on a later section of Train 1-3, leaving El Paso 4:14 P. M. No conductor was assigned to those cars. No regular or extra El Paso Agency conductors were available that afternoon. Chicago District Conductor A. J. Johnson, who had operated the Pullman cars on RI-SP Train 3 from Chicago, was held over at El Paso to operate on the July 15 return trip, El Paso to Chicago.

Meanwhile, the Los Angeles District deadheaded a conductor to Yuma where he took over the Pullman cars on the second section of Train 1-3 at 2:00 A. M. on July 15. In all, Train 1-3 operated without a conductor for about ten hours between El Paso and Yuma.

O.R.C.'s Local Chairman filed a claim on behalf of Chicago District Conductor Johnson for a service trip El Paso - Los Angeles, and for a deadhead trip Los Angeles - El Paso. The Company denied this claim, but offered to compensate an El Paso conductor (to be named by the Local Chairman) for the unprotected portion of the Train 1-3 trip (i.e., from El Paso to Yuma). This offer (reiterated at various stages of the proceedings) was declined.

The Organization contends—and the Company does not deny—that Rule 64 (a) was violated when Train 1-3 (second section) was operated out of El Paso without a Pullman Conductor. This Rule provides:

“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, except as provided in paragraph (e) of this Rule.”

The Organization also contends (but the Company denies) that Rule 25 was violated. This rule provides in relevant part that:

“RULE 25. Basic Seniority Rights and Date. (a) The seniority of a conductor, which is understood in this agreement to mean his years of continuous service from the date last employed, shall be confined to the district where his name appears on the seniority roster.

* * * * *

“(c) In any district, the right to perform all Pullman conductors' work arising therein, as established by past practice and custom, shall belong exclusively to the conductors having seniority in such district, subject to the exceptions of these rules herein otherwise contained.”

Petitioner's argument may be summarized as follows:

1. Rule 64 (a) is a mandatory rule which requires assignment of a conductor whenever two or more Pullman cars are used. If a conductor is available—as was Mr. Johnson on July 14, 1964—the Company has no contractual right to deliberately flout this rule.

2. Under virtually identical circumstances—on June 16, 19, 20 and 21, 1964—New Orleans District Conductors (who at that time turned over their cars to the Chicago conductor at El Paso) were operated through El Paso to Los Angeles on SP Trains 1-3 when there was no El Paso Agency conductor or Chicago District available.

3. It is of no relevance that Claimant Johnson held Chicago District seniority since he was the only conductor available for the El Paso - Los Angeles trip (see Award 12465). Rule 36 permits such an assignment in an emergency. It provides in relevant part:

“Continuance in Regular Assignment. A conductor operating in

regular assignment shall not be used in service outside his assignment except in emergency * * *

Carrier's contentions, in brief, are as follows:

1. Rule 25 confines work arising in a district, with certain exceptions, to conductors having seniority in that District. Since a conductors' roster is maintained at El Paso, all work arising at El Paso belongs exclusively to conductors on that roster. Therefore, the Company did not violate Rule 25 when it failed to assign Claimant Johnson, whose seniority is confined to the Chicago District, to Train 1-3 on July 14, an assignment which belonged to an El Paso conductor.

2. Rule 64 defines a "passing point" as a point at which a conductors' roster is maintained and at which point cars are picked up by passing trains (Q-1 and A-1). Consequently, on July 14 the Company was supposed to assign an El Paso conductor to the cars on the second sections of Train 1-3. Since none was available when this emergency arose, the train left without a conductor. The Yuma - Los Angeles part of the trip however, was covered. The proper remedy, therefore, for the violation of Rule 64 is to compensate an El Paso conductor for the unprotected El Paso - Yuma trip and return deadhead.

3. Rule 36 is a permissive, not a mandatory rule. It does not require the Company, in an emergency, to use a conductor outside his regular assignment; it merely authorizes such action. (Q-3 and A-3 state: "May a conductor who is operating in regular assignment be used out of his assignment at his opposite terminal on a train departing before his specified layover expires? No, except in an emergency.") In the instant case Management chose not to avail itself of Rule 36 since, had Mr. Johnson been assigned to Train 1-3 at El Paso, he could not have returned to that city in time to protect his regular El Paso - Chicago assignment on July 15. In an emergency, Management contends, it has greater latitude than usual in making assignments.

4. The September 21, 1957 Memorandum of Understanding covers the question of who should be paid for the July 14, 1964 El Paso - Yuma run. Item (6) states:

"When an extra conductor is not available at the district having jurisdiction over the service assignment, payment for such trip shall be made to the available regularly-assigned conductor designated by the Local Chairman."

After carefully evaluating the parties' contentions, the facts, and the applicable contract terms, it is our conclusion that this claim must be sustained. The distinguishing characteristic of this case is the fact that, on July 14, 1964, a conductor was available at El Paso for service on Train 1-3. But, despite Mr. Johnson's availability, Management chose not to use him. Rule 64, however, does not offer the Company such an option when a conductor is available. Rather, it states categorically that "Pullman conductors shall be operated on all trains while carrying * * * more than one Pullman car * * *". We can find nothing in the rest of Rule 64 (definition of "passing point," or the like) which diminishes Management's obligation to use a conductor when one is available. The Paragraph (e) exception is not applicable here. (Emphasis ours.)

True, seniority rights are normally confined to home districts under Rule

25. But there are exceptions (Paragraph (c) so states), and Rule 36 specifically allows a conductor operating in regular assignment to be used outside that assignment in an emergency. That is not to say that Management is always obligated to follow such procedure. Here, for example, had circumstances allowed, the Company might have called an extra conductor from Los Angeles, used a man from the El Paso roster, or the like. However, since these options were not open on July 14, and since Rule 36 permitted the assignment of Mr. Johnson, Management had to use him in order to be in compliance with Rule 64.

The Company's desire to have Mr. Johnson at El Paso on July 15 for his return run to Chicago is understandable, particularly in view of the need to find a replacement were he to have been assigned the El Paso - Los Angeles trip. But, the Rule 64 requirement must be considered paramount. If no replacement could have been found for Mr. Johnson's regular El Paso - Chicago assignment Management, possibly, would have had to choose between two violations: No assigned conductor on El Paso - Yuma on July 14 or on El Paso - Chicago on July 15. Perhaps its decision would then have been proper. But, that would raise a different issue since there is nothing in the record here to indicate that the Company could not have manned both trains with conductors.

The September 21, 1957 Memorandum of Understanding does not appear to be in point. Its preliminary paragraph indicates that it applies to "circumstances comparable to those involved in * * * Item 2 and Attachment 'E' of the Mediation Agreement (Docket No. 3099), dated May 16, 1949 * * *" Significantly, under those circumstances the Company agreed that it "will not assert an inability to place a conductor on the cars because of non-availability * * *" There is no evidence that the July 14, 1964 situation was comparable to the "circumstances" involved in the cited Mediation Agreement and, as already noted, a conductor was available for assignment on July 14.

FINDINGS: The Third Division of the Adjustment Board, upon the 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of September, 1966.

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