Award No. 15065
Docket No. PC-15992

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor I. A. Fields, Milwaukee District, that the Agreement between the Milwaukee Road and its Parlor Car Conductors was violated, when:

1. Under dates of September 18-19, 1964, Conductor Forby was used in an assignment, Chicago to Minneapolis and return, on trains 3 and 2.

We contend that under the terms of Rule 33 (c) Conductor I. A. Fields should have been used.

2. Because of this violation we now ask that Conductor Fields be credited and paid under applicable rules of the Agreement just as though he had been properly assigned and used.

We also claim that the Company violated Rule 34 (a) in employing Conductor Fields, and that Rule 33 was further violated when Conductor Fields was not available during signout period, as required.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, revised April 9, 1962, 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.

In accordance with the provisions of Rule 22 of the Agreement between the Milwaukee Road and its Parlor Car Conductors, a copy of the Seniority Roster for Parlor Car Conductors employed by the Milwaukee Road is furnished to the Chairman of the General Committee of Adjustment. The Seniority Roster dated January 9, 1964, shows the names and seniority dates of the Parlor Car Conductors on the Roster as of January 1, 1964, as follows:

F. W. Schaefer
A. J. Corbett
R. E. Michau
D. R. Hockenbury
T. W. Forby

This is to advise that the original claim refers to only Rule 33-E and reference to claimed violation of other rules is improper.

This is also to advise that the facts developed during the hearing clearly show that the employes' claim in behalf of Mr. Fields is improper and that the use of conductor T. W. Forby on this assignment was in accordance with the rules and your claim in Mr. Fields' behalf is respectfully declined for reason that it is not supported by schedule rule or agreement.

Enclosed are two copies of the transcript."

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends that Carrier violated Rule 34 (a) of the Agreement between the parties when it promoted Claimant I. A. Fields and three other porters to positions as extra Conductors effective September 1, 1964 and that Carrier further violated Article 33 (e) of said Agreement, when it failed to use Claimant I. A. Fields in an assignment between Chicago and Minneapolis on trains 3 and 2 on September 18 and 19, 1964.

The essential facts involved in this dispute are not in issue. Carrier operates a parlor car on its train 3 from Chicago, Illinois to Minneapolis, Minnesota and on its train 2 from Minneapolis, Minnesota to Chicago, Illinois. One regular parlor car conductor is assigned to each train and an Extra Parlor Car conductor relieves both of them and performs any other extra work that may arise. The parties agree that the assigned run normally requires approximately 2⅔ parlor car conductors to cover the assignment on a monthly basis. Immediately prior to the instant dispute, only one extra conductor was available and he performed all the necessary extra work on the assignment.

The record discloses that Carrier promoted four (4) porters, including the Claimant herein, to positions as extra conductors effective September 1, 1964, which Petitioner contends violated Rule 34 (a) of the controlling Agreement as they allegedly became eligible for immediate assignment from the extra board.

Thereafter, none of the four promoted men were used as extra conductors by Carrier in accordance with Rule 33 (e) until they ultimately were furloughed on October 16, 1964. In fact, Carrier admits they were not used on the extra board at any time unless the regular extra conductor used on trains 3 and 2 was unavailable.

Petitioner contends that Claimant herein was entitled to be assigned from the extra board to train 3 on September 18, 1964 and train 2 on September 19, 1964 under Rule 33 (e) of the Agreement. Carrier avers that it properly used the regular extra conductor on said dates because he was the only extra board Conductor available and his use was required under Rule 34 (a) and Rule 33 (e), which read as follows:

"RULE 34.
REGULATING THE NUMBER OF CONDUCTORS
ON THE EXTRA BOARD

(a) The extra board shall be maintained by using thereon the number of extra conductors which shall afford as nearly as possible

minimum earnings of three-fourths of a basic month's pay for each extra conductor who does not lay off of his own accord. The intention under this rule is to allow conductors, working on the extra board, an opportunity to average, as nearly as possible, full time before additional conductors are recalled from furlough or employed. It is not the intention to restrict the earnings of extra conductors to ¾ time by maintaining an unnecessarily large number of conducotrs on the extra board."

"RULE 33.
OPERATION OF EXTRA CONDUCTORS

(e) Until credited and assessed hours have been acquired in the current month, extra conductors shall be assigned in accordance with their credited and assessed hours for the preceding month, the conductor with the least number of such hours to be assigned first, continuing until all conductors in this group have been assigned, after which the extra conductors shall be assigned in accordance with their credited and assessed hours in the current month, the conductor with the least number of such hours to be assigned first."

Petitioner contends that Rule 34 (a) restricts Carrier's authority to hire or promote employes as extra conductors on the extra board because it describes therein the intent of the rule as being to assure as nearly as possible minimum job security for all extra conductors working on the extra board. Petitioner asserts that Carrier must have known that the job security implicit in Rule 34 (a) would be rendered meaningless when it promoted four additional employes to the extra board.

Carrier contends that Rule 34 (a) does not specifically prohibit Carrier from hiring new extra conductors and that Carrier's intent was to qualify the four porters who were promoted to parlor car work, including the Claimant, for use when more than one extra parlor car conductor is required. Carrier asserts that the four promoted porters were not immediately placed on the extra board but fell into an "in between status" until they became fully qualified and uniformed. Further, that Claimant was not available for service on September 18 and 19, 1964 because he was on vacation under the provisions of a different agreement and had not secured his conductor uniform.

We concur in the Carrier's contention that Rule 34 (a) does not specifically prohibit the Carrier from promoting the Claimant and three other porters to positions as extra conductors effective September 1, 1964. However, Carrier was obligated thereafter to implement the intent clearly set forth in Rule 34 (a), which it has failed to do. Carrier could have immediately furloughed Claimant and the other promoted extra conductors under Rule 34 (b) until such time as an actual need for their service arose. Instead, Carrier elected to hold them in an "in between status," until such time as a need for their services as extra conductors occurred, thus, ignoring the clear and unequivocal language contained in Rule 33 (e) concerning the assignment of extra conductors. Carrier belatedly has called our attention to Rule 21, which pertains to pay for student conductors, in support of its premise that Claimant was properly held in an "in between status" by Carrier until fully qualified for duty as an extra conductor. We find no merit in Carrier's contention that said

rule is applicable in the present situation. Moreover, the issue was not offered or considered while the dispute was handled on the property and is therefore inadmissible.

When Claimant and the other porters were promoted to positions as parlor car conductors, they obtained seniority and became subject to the provisions of the controlling agreement between the parties. The Claimant was the extra conductor with the least credited and assessed hours as of September 17, 1964, at sign out time and, therefore, eligible for assignment to the trip commencing on September 18, 1964. Although Carrier did not violate Rule 34 (a) when it promoted Claimant and three other employes to positions as extra parlor car conductors, it was thereafter obligated to comply with the intent thereof as well as all other rules of the controlling Agreement. Carrier has failed to comply with Rule 33 (e) and Rule 33 (k), which requires Carrier to maintain a complete record of the credited and assessed hours of all extra conductors and all assignments of extra conductors.

Carrier asserts that Claimant was not available for service on September 18, 1964 because he was on vacation and did not have a conductor's uniform. We find this defense without merit. Carrier made no effort to call the Claimant for service as an extra conductor during his vacation, which had accrued under a different agreement between the Carrier and another Organization. Furthermore, Carrier should have required Claimant to obtain the necessary uniform for service as an extra conductor when he was promoted to that classification.

In view of the foregoing, we shall sustain the Claim insofar as it alleges a violation of Rule 33 (e) of the Agreement. Claimant should be paid the difference between what he has been paid and what he should have been paid as an extra conductor in an assignment on trains 3 and 2, between Chicago, Illinois and Minneapolis, Minnesota, on September 18 and 19, 1964.

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 in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1966.

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