

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductor Parker made one round trip in line 2423 between Philadelphia and New York on January 18, 1937, for which he was paid one day. He claims an additional one-sixth of a day's pay for his pro-rated portion of the scheduled relief on this line."

EMPLOYES' STATEMENT OF FACTS: "This grievance has been presented under the Agreement between The Pullman Company and conductors in the service of The Pullman Company. Decision of the highest officer designated for that purpose is shown in Exhibit 'A.' Rule 19, Exhibit 'B,' and Rule 21, Exhibit 'C,' are involved in this case. Mr. Vroman, in his decision, uses the number of trips as the numerator and the number of days in the week as the denominator, whereas, Rule 21 (Exhibit 'C') establishes the number of days worked as the numerator and the number of days in the month as the denominator."

POSITION OF EMPLOYES: "Conductor Parker claims pay for the pro-rated portion of the weekly relief for the trip in question. There can be no deviation from this rule and so far as is known it is being observed elsewhere. The method for determining the amount of pay due for pro-rated relief is definitely fixed by Example No. 1, Rule 21. The reason for establishing this method is that regular line service is computed on the day's service basis which includes relief days, the amount of pay per day varying with the number of days in the month. The monthly wage divided by the number of days in the month determines the amount of the day's pay."

"The Management claims that Conductor Parker has been paid the same as the regular man he relieved but that is not borne out by the facts. If this method was followed out for the entire month, Conductor Parker would have to work every day in the month, Sundays, relief days and all, for a straight month's pay. That is not true with the regular man who, if required to work every day, would be paid a full month's wages and overtime for every day worked on layover or relief."

"It will be noted that the decision of the Management, Exhibit 'A,' is not based upon the rules involved. Conductor Parker requests that the rule be observed."

CARRIER'S STATEMENT OF FACTS: "A. W. Parker, an extra conductor of the Philadelphia District, made a round trip between Philadelphia and New York on Monday, January 18, 1937, in cycle No. 2 of line No. 2423, in place of a regularly assigned conductor. The trip was a regularly scheduled run in that cycle. He received one day's pay for that round trip. He claimed pay for one and one-sixth days."

making the one round trip will be paid $7/31$ of his monthly wage. The rule being that where portions of a month are worked, the number of days worked shall be used as the numerator and the number of days in the month as the denominator.

Example No. 2: A conductor makes during a month one round trip in each of two regular assignments, one exceeds an average of 8 hours a day for the days paid for and the other is an under-time run. The first pays 4 days and has a credit of 35 hours. The second pays 5 days and has a credit of 38 hours. The conductor making these two round trips will be paid for 9 days at his daily rate and 1 hour at the hourly rate. Two hours of the overtime on the first round trip will be absorbed by the under-time in the second round trip; this being all the work done by this conductor in regular assignment during the month."

OPINION OF BOARD: The dispute here turns on whether Rules 21 and 19 are governed by a per day or a per trip basis.

The former provides the basis for compensation of conductors working part time on regular assignments and the latter for the prorating of the relief in such cases as between the incumbent of the assignment and the relief. The petitioner maintains the per day basis is applicable, the carrier the per trip basis.

Rule 21 obviously does not correctly state the intention of the parties. Followed literally it would require payment to the claimant of 8 days' pay for the 5 hrs. 35 mins. actually on duty. This is so because there are 8 conductors in the assignment covered by bulletined schedule, of which he relieved 1 on the day involved performing 1 round trip between Philadelphia and New York. The assignment covers 4 cycles worked by 8 men alternately each 6 days a week, 2 cycles making 8 round trips and the others 7 per week; the 8 trip cycles make 2 trips on 2 days and 1 on the others and the 7 trip cycles make 2 trips on 1 day and 1 on the others.

Both parties agree that Rule 21 does not mean what it says; it probably was drafted with a run in mind, taking 5 or 6 days to make a round trip. The Example No. 1 under this rule throws no further light on its meaning in the respect here involved since it apparently takes the same assignment. But it does add significantly "The rule being that when portions of a month are worked, the number of days worked shall be used as the numerator and the number of days in the month as the denominator." In view of this unmistakable language it must be concluded that the day basis is applicable, not the trip basis.

Looking next to Rule 19 governing proration of relief, it will be seen that if the day basis is applicable under this rule the relief man would be entitled to $1/6$ th of the relief day, i. e., 1 day in 7 regardless of which cycle he worked in, whereas on the trip basis he would be entitled to $1/8$ th in the 8 cycle week and $1/7$ th in the 7 cycle week. The rule itself is not specific as to which basis applies.

The example given refers both to trips and days, but since it involves a case where 2 round trips are made in 4 days followed by 1 day of relief, each leg of the round trip apparently requiring 1 day, it follows that in that case there would be no difference between the number of trips and days. Accordingly the example throws no light on the situation.

In the circumstances Rule 19 is equally open to either construction and consequently in the interest of consistency with the major rule (21) ought to be construed as governed by the day basis rather than the trip basis, except that a conductor filling only one of the two round trips scheduled on any day shall be paid one-half day for the road service and one-half of one-sixth of the relief day.

These conclusions are fortified by the fact that the fundamental pay factor provided by the agreement is the hourly rather than trip basis.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 facts of record sustain the claim of the conductor.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1938.