

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John A. Lapp, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductor Kearns was required to make a round trip in his assignment on a prescribed relief day and was paid one-half day for that trip. The regular trip rate is one and one-quarter days' pay. He claims the difference of three-fourths of a day for this trip made on March 26, 1937, in line 3126, operating between Houston and Ledbetter, Texas."

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, effective December 1, 1936: Decision of the highest officer designated for that purpose is shown in Exhibit 'A'. The rules involved are Rule 9, Exhibit 'B'; Rule 15, Exhibit 'C'; Rule 20, Exhibit 'D' and Rule 24, Exhibit 'E'.

"Relief days in regular assignment are scheduled to occur on specified days. They are not subject to change unless the operating schedule of the line is changed and a new itinerary is published. In this case the itinerary calls for four round trips followed by one day relief. Instead of getting the relief after completing the four round trips, the conductor was required to make the fifth consecutive round trip on his scheduled relief day and was told to take his relief following that trip.

"The itinerary of the line was not changed for that purpose as required by Rule 15, Exhibit 'C'. When a conductor is held off his assignment at the direction of the management he is entitled to hourly credits as established in Rule 9, Exhibit 'B'."

CARRIER'S STATEMENT OF FACTS: "While the 'Statement of Claim' presented to the Third Division in behalf of conductor E. W. Kearns does not specify the day, month or year in which he made 'a trip in his line on regular relief day', the hearings before this Company's representatives show that his claim has reference to the second half month of March, 1937.

"Conductor E. W. Kearns, Houston District, was regularly assigned to operate from Houston to Ledbetter and return in line No. 3126 (Houston and Austin) on the following schedule:

Report for Duty			Released from Duty			Elapsed		Net	Lay-
Station	Hour	Day	Station	Hour	Day	Time	Rest	Serv. Hrs.	
Houston	9:15 PM	1	Ledbetter	2:30 am	2	5'15"	None	5'15"	None
Ledbetter	2:30 am	2	Houston	8:00 am	2	5'30"	3	2'30"	13'15"
Total —						10'45"	3'	7'45"	13'15"

"A periodic relief of 24 hours in Houston was provided after completing four round trips. 1¼ conductors were required to fill the assignment on the above outlined schedule. Performance of four consecutive round trips comprised a cycle in it and entitled a conductor performing such work to 5 days'

- (1) that we have complied with Rule 19 in that payment for the service performed has taken into consideration the proper proportion of the relief day scheduled in the assignment;
- (2) that we have met the requirements of Rule 21 in that we have paid him for each round trip he performed 'the number of days there are conductors in the assignment as covered by bulletined schedule,' and
- (3) that inasmuch as he has been paid twice for the period extending from 9:15 P. M., March 26th, to 9:15 P. M., March 27th, we have met the requirements of Rule 24 that 'road service performed by conductors on specified layover or relief days shall be paid for in addition to all other earnings for the month.'

"In the presentation of this claim in behalf of conductor Kearns it has not been shown in what manner he has been shortpaid $\frac{3}{4}$ of a day's pay; his claim has not been substantiated by the introduction of any supporting evidence nor has it been shown that we have failed to comply with the provisions of any rule applicable to the service he performed on the night of March 26th-27th. We maintain conductor Kearns has been properly paid for the service in question in accordance with the rules of the agreement, and that his claim, therefore, is without merit and should be denied."

OPINION OF BOARD: The Board holds that under Rule 24 conductors are to be compensated for road service performed on specified layover or relief days in addition to all other earnings for the month.

The facts in this case are not in dispute. Conductor Kearns performed one round trip within the spread of his layover and the regular allowance for such trip was one and one-fourth days. Conductor Kearns was entitled to pay for one and one-fourth days. Whether he has received pay for one and one-fourth days, for the particular service, will be disclosed by a check of the payrolls and the case should be remanded, with direction that if Conductor Kearns has not been paid already for one and one-fourth days on account of work performed within the spread of his layover, he shall be so compensated.

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 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 facts of the record prove the contention of the Conductor that he should be paid one and one-fourth day's pay for the trip on the relief day, March 26-27, as provided for in Rule 24.

AWARD

The claim of the employee for compensation is sustained, in accordance with the above opinion, and the case is remanded to the parties to determine whether or not such compensation has been paid for the specific service performed on lay-over days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1938.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 666
DOCKET PC-582**

NAME OF ORGANIZATION: The Order of Sleeping Car Conductors

NAME OF CARRIER: The Pullman Company

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Award No. 666 held that when a conductor was used on a relief day he should receive compensation therefor in addition to all other earnings for the month. A question of fact having been presented, as to the amount received by Conductor Kearns, the Division upheld the claim, but remanded the case to the parties to determine from a check of the payrolls what was due him. Upon a review of the payrolls the parties were still in dispute and the case was brought back to the Division for an interpretation.

The sole question before the Division is the determination of the actual amount which should be paid to Conductor Kearns. The Division is not, in this interpretation, reviewing its original decision which held that Conductor Kearns was entitled to pay for the trip performed on his relief day in addition to all other earnings for the month.

The carrier insists that Conductor Kearns has received pay for one day and a quarter, for the day in question, contending that the Conductor was given his relief day the day after the regular day and that the total pay for the half month amounted to sixteen days and a quarter.

The employees insist that Conductor Kearns should be paid his regular earnings, which would be for sixteen and one-quarter days for the half month, and for a day and a quarter extra for a double on a relief day, and point out that a relief day cannot be arbitrarily taken away and another relief day assigned.

The carrier insists that the Conductor was paid for his relief day and that if there was a claim for being held out of service on another day, it should be brought up in the regular course as a claim for compensation for not being used.

The whole issue is based on Rule 24 and this Division has already decided, in a number of cases, that Rule 24 is a penalty rule designed to prevent or to lessen the use of employees on their relief days. Under Rule 24 payment for service on relief days is to be made in addition to all other earnings for the month. The word "earnings" means what the employee is entitled to and not what he has received.

In this case Conductor Kearns was entitled to receive payment for sixteen and one-quarter days, during the second half of the month of March, plus one day and a quarter for the double on March 26, 1937. The payroll check indicates that he received pay for sixteen days and a half which included one-fourth of a day carry over from the previous half month. Conductor Kearns was entitled to receive pay for sixteen and one-fourth days for his

regular service without the double on a relief day. Conductor Kearns should have received pay for one and one-fourth days over and above the sixteen and one-fourth days of regular earnings. Conductor Kearns claimed only three-fourths of a day additional. The Division cannot properly enlarge the claim in a case before it and, therefore, holds that the amount of the original claim should be paid to Conductor Kearns.

Referee John A. Lapp, who sat with the Division, as a member, when Award No. 666 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of February, 1939.

**DISSENT ON INTERPRETATION NO. 1 TO AWARD NO. 666,
DOCKET PC-582**

We dissent from the so-called interpretation because it is not an interpretation of Award 666, but an enlargement upon both the claim and award and its effect is that of a new award and is therefore void.

The claim decided by Award 666 involved only one round-trip made by Conductor Kearns beginning at 9:15 P. M., March 26, 1937, and ending at 8 A. M., March 27, 1937, on a prescribed relief day. The claim alleged that Conductor Kearns, for the **service performed** on his prescribed relief day, was entitled to 1-1/4 days' pay, and that the carrier had paid only 1/2 day's pay for the trip. In the presentation of the case to the Division, the petitioner alleged that Conductor Kearns had been paid but 1/2 day for the trip on March 26, and that he was entitled to an additional payment of 3/4 day. The respondent contended that Conductor Kearns had been paid 1-1/4 days for the service performed.

The Opinion of the Board (Award 666) written by the Referee was:

"The Board holds that under Rule 24 conductors are to be compensated for road service performed on specified layover or relief days in addition to all other earnings for the month.

"The facts in this case are not in dispute. Conductor Kearns performed one round trip within the spread of his layover and the regular allowance for such trip was one and one-fourth days. Conductor Kearns was entitled to pay for one and one-fourth days. Whether he has received pay for one and one-fourth days, for the particular service, will be disclosed by a check of the payrolls and the case should be remanded, with direction that if Conductor Kearns has not been paid already for one and one-fourth days on account of work performed within the spread of his layover, he shall be so compensated."

After finding that Conductor Kearns was entitled to 1-1/4 days for the **service performed on his relief day**, the Referee said:

"Whether he has received pay for one and one-fourth days, for the particular service, will be disclosed by a check of the payrolls and the case should be remanded, with direction that if Conductor Kearns has not been paid already for one and one-fourth days on account of work performed within the spread of his layover, he shall be so compensated."

The question came back to the Division through a request of the petitioner for an interpretation of Award 666, with the contention that Conductor Kearns has not been paid 1-1/4 days for the service, the respondent contending that he had been so paid and submitting in proof of its contention photostat copy of the payroll record, the basic information for it having been prepared by the conductor himself, showing that the particular service in question, trip performed on his relief day, March 26-27, was compensated for by the allowance of 1-1/4 days.

The so-called interpretation does not pass upon—indeed, it ignores—the payroll record, which shows the payment made for the only service in question, and proceeds to consider what happened in the last payroll period in the month, and on dates following performance of the only service involved in the claim. That the so-called interpretation is not in fact an interpretation of Award 666 is established by its third paragraph, reading:

“The sole question before the Division is the determination of the actual amount which should be paid to Conductor Kearns. The Division is not, in this interpretation, reviewing its original decision which held that Conductor Kearns was entitled to pay for the trip performed on his relief day in addition to all other earnings for the month.”

The only authority of this Board in respect to the matter here involved is found in Section 3, First, (m), of the Amended Railway Labor Act, reading in part:

“In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.”

Any attempt to interpret a written instrument without review, and considering all its terms, violates every canon of interpretation. A review of the award definitely shows that the only question before the Board, and the only one upon which it had authority to pass, and the only one upon which it did pass, was claim for particular service performed on March 26-27, and the payment to be allowed for that particular service. The Board found that the proper payment for the particular service was 1-1/4 days, and the case was remanded for a check of the payrolls to determine if that allowance had been made. The payroll record established beyond a doubt that Conductor Kearns was paid 1-1/4 days for the particular service performed, which met all requirements of Award 666.

There was not involved in the claim submitted, or in the Opinion of the Referee, the Findings, and the Award, any question concerning pay for service not performed—yet the so-called interpretation written by the Referee deals with a question not before the Board in Award 666, and one upon which it did not pass in that award.

The Referee says that the word **earnings** used in Rule 24, means what the employe is entitled to, and not what he has received. The effect of this statement is that the word **earnings** does not mean **earnings**, but means something else. The parties to the agreement used the term **earnings** in Rule 24. When they used the term **earnings**, we can apply only that language.

To achieve the end undertaken by this so-called interpretation, the Referee chooses to confuse **earnings** with **guarantee**. These terms are distinctly different as used in labor agreements generally. The only provision of the agreement here involved having the effect of guaranteeing monthly earnings is Rule 20, and its provision is applicable only to regularly assigned conductors on completion of a monthly assignment. It applies under no other condition or circumstance.

The evidence before the Board in the case covered by Award 666 shows that Conductor Kearns laid off for ten days during the month of March, of his own accord; therefore, the provisions of Rule 20 have no application to

the service performed by him during that month. The examples which follow Rule 24 in the agreement clearly refute the statement of the Referee.

/s/ R. H. Allison
/s/ J. G. Torian
/s/ Geo. H. Dugan
/s/ C. C. Cook
/s/ A. H. Jones

REFEREE'S RESPONSE TO THE DISSENT TO
Interpretation No. 1 to Award No. 666
Third Division

The issue in this case is simple and should not be confused. The Division was called upon to say, in the light of its Award No. 666 what amount should be paid to Conductor Kearns. The Division has fixed the amount at three quarters of a day, the original claim. No other matters were before the Division, except the determination of the amount that should be paid to Kearns. The main issues discussed in the Dissenting Opinion were raised and decided in the original docket and were not the subject of review in the interpretation.

In explaining the case, for the purpose of determining the amount due Conductor Kearns, the Division attempted to clarify the issues and, to that end, reviewed pertinent matters involved in the original docket. The Division held, in its original decision, that Conductor Kearns was entitled, under Rule 24, to pay for being used on a relief day. Rule 24 requires that such pay be in addition to all other earnings for the month.

The carrier members insist that he got pay for the relief day. The payroll check indicates that he is recorded as having received pay for that particular day. The question is, however, has he received pay under Rule 24, namely, for use on a relief day over and above all earnings for the month? The issue is confused by the fact that Kearns was held out of service the next day and the income for the month was, thereby reduced.

Obviously, Rule 24 was circumvented by the procedure of using this man on his relief day and then holding him out the next day. If that particular procedure were to be allowed, then Rule 24 could be destroyed by the simple device of holding a man out of service an equivalent time. The Carrier members state that a claim could be made for being held out of service. At best, this would be a round about means of complying with Rule 24. The procedure would result in an absurdity, inasmuch as Rule 24 is clear and the principle thereof accepted. That rule means that employees are to be protected against being used on their relief days and it must be obvious that the relief days are not to be shifted arbitrarily for the purpose of getting around the rule.

The intent is clear that the payment for relief days shall add that much to what the worker would have earned in regular employment. Kearns would have earned in regular employment sixteen and one-quarter days, in the second half of March, in his regular assignment. The Carrier chose to use him on a relief day which would have added a day and a quarter to his regular earnings. The Carrier could not defeat the purpose of the rule by holding him out and compelling him to make a separate claim for the time held out.

The Division considered all pertinent questions in the original Docket and concluded that Kearns was entitled to some payment for service on a relief day. The amount due him, being in dispute, the Division remanded the case to the parties to determine what amount was due to Kearns in the light of Rule 24. The parties being unable to agree on the amount, the Division was petitioned to determine what was due Conductor Kearns. The Division has determined the amount due to him, under the application of Rule 24 as interpreted, and applied in Award No. 666. The dissenting opinion does not deal with this phase of the question, but opens up the original controversies which were settled in the decision in Award No. 666.