

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS—
PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System General Committee, claims credit and pay for all conductors operating on Line 1434 for time held for service at Detroit under the operating schedule effective February 27, 1943, claim being based on violation of the Agreement between The Pullman Company and Conductors in the service of The Pullman Company, with special reference to Rules 4, 6, 9, 12, 17 and 20.

EMPLOYES' STATEMENT OF FACTS: This dispute has been handled in the usual manner provided for in the Agreement up to and including the highest ranking officer of the carrier designated for that purpose.

Under date of March 11, 1943, the following claim was filed:

"Protest and claim of the O. R. C.—Pullman System Committee, that the carrier violated the rules of the Conductors' Agreement when it posted line 1434 for conductors' bids to operate as shown by operating form dated February 27, 1943, Chicago South District.

(1) The operating schedule dated February 27, 1943, provides that the conductors will operate Chicago to Buffalo on M. C. Train No. 44 in line 1434; Buffalo to Detroit on M. C. Train No. 35 in line 1579, and Detroit to Chicago on Wabash-Pennsylvania Train No. 7 in line 1765.

Rule 31 requires that runs shall be bulletined for a period of ten (10) days in the district where they occur. Inasmuch as the run operates out of Chicago South District, and returns to the Chicago Western District, the run is not properly posted, as only half of the run operates out of the Chicago South District. Therefore, the operating schedule violates the intent and purposes of the agreement. The run as presently constituted is nothing more or less than a pooled operation which is prohibited by the Agreement and awards of the National Railroad Adjustment Board.

(2) Rule 4 is violated because all hours worked are not properly credited. There are three hours and fifteen minutes (3'-15") at Detroit held-for-service not credited.

(3) Rule 6 is violated because conductors should not be released at Detroit, but held for service, and hence entitled to hourly credits at that point.

(4) Rule 9 is violated because it requires credit and pay for time held-for-service, which is ignored at Detroit.

(5) Rule 12 is violated because all hours are not credited.

(6) Rule 17 is violated because the failure to credit all the hours worked cuts down the number of conductors assigned to the run, which in turn cuts down the layover they are entitled to.

paid for at the rate of time and one-half. Conductors in regular assignment shall be credited for a round trip the number of days there are conductors in the assignment, as covered by bulletined schedule.

Q-1. A regular conductor works a full month in June on his assignment of 238 hours and has 4 days layover extending into July and then lays off or leaves the service. How shall he be paid for this service?

A-1. He shall be paid a full month's wage for June and 4/31 of his monthly wage for July."

Each conductor in the assignment as established effective February 28, 1943 received credit and pay for the time he worked, that is the time on duty, in the month. If he completed all of his round trips in a 30-day month he received credit for ten round trips or, in all, a total of 240:50 hours. For the 240 hours he received his basic month's wage and for the additional 50 minutes he received additional pay at the pro-rata hourly rate. In accordance with the provisions of Rule 20, that "Conductors in regular assignment shall be credited for a round trip the number of days there are conductors in the assignment, as covered by bulletined schedule.", each conductor in this assignment completing a round trip was credited with three days so that at the end of a 30-day month, having completed all of his ten round trips, he was credited with a full month's work and paid additionally for any overtime performed. The Organization claims this rule is violated "... because the number of days credited for a round-trip has been reduced improperly." Since there were 3 men in the assignment and each conductor in the assignment received credit for 3 days for a round trip in the assignment, it is impossible to see how the Organization can contend that the rule was violated. It is quite true that with the change of February 28, 1943, the number of men in the assignment was cut from $3\frac{1}{2}$ to 3 but this was not due at all to the increase in the amount of layover at Detroit. The reduction in the number of men in the assignment was caused by a reduction in the number of hours on duty per round trip. Under the operation in effect prior to February 28, 1943, the conductors returned to Chicago from Detroit on Michigan Central train No. 23 in 7:10 hours. After February 28, 1943, they returned on the faster Wabash-Pennsylvania train No. 7 in but 6 hours. Consequently, after February 28, 1943, the hours on duty for a round trip were reduced from 25:15 hours to 24:05 hours, and it required, therefore, but 3 men instead of $3\frac{1}{2}$ men to fill the assignment and keep the average hours on duty per day close to the 8 hours contemplated by the Agreement. Certainly the Organization can prove no violation of Rule 20.

From the foregoing discussion of the rules which the Organization claims were violated, it can be seen that most of them are absolutely irrelevant to this dispute and that there has been no violation of any of them. The Pullman Company has shown that the layovers established in the operation effective February 28, 1943, were not in violation of any rule of the Agreement and were prescribed in the operating schedule in accordance with the provision of Rule 15. The Organization can point to no rule in the Agreement which specifies the amount of away-from-home layover which can be prescribed in a regular operation, nor can the Organization point to any rule which limits the number of locations where away-from-home layovers can be established in a regular operation.

The Organization has failed utterly to prove that the conductors' operation in Line 1434, as established effective February 28, 1943, was in violation of the Agreement. Their claim is without merit and should be denied.

OPINION OF BOARD: The question here is whether times during which Pullman conductors, operating on the Michigan Central out of Chicago Southern District between Chicago and Buffalo, were held in Detroit were layovers or time held for service. The conductors reported at Chicago Central

Station, their home terminal, at 8:45 A. M. Central Time. They were released at Buffalo at 9:55 P. M. Eastern Time, same day. After a layover of 9 hours 10 minutes, they reported at Buffalo for the return trip on the second day out at 7:05 A. M. They arrived at Michigan Central Station, Detroit at 12:45 P. M. same day. Released at 1:00 P. M. they were required, after 3 hours and 15 minutes, to report at Fort Street Station, Detroit, at 4:15 P. M., and work a Wabash-Pennsylvania train, operating out of the Detroit District, to Union Station, Chicago, in the Chicago Western District, arriving at 9:00 P. M. same day. On April 14, 1943, the above described schedule was modified so that said conductors now take a Michigan Central train from Detroit to Chicago, 1 hour and 45 minutes after the completion of their Buffalo-Detroit operation.

The conductors say the time spent in Detroit under both of the above schedules should be credited as time held for service, instead of deducted as layovers. In support of their contention they call attention to the following additional facts, which are not challenged. Under the schedule first above described the conductors were compelled to travel from the point of their release in Detroit to another station three miles away, in order to reach the Wabash-Pennsylvania train, which was a Detroit District operation. Prior to April 15, 1942, said Wabash-Pennsylvania train had been served by Detroit conductors, but on that date said conductors were replaced by porters who performed conductors' duties until succeeded by the complaining conductors. The Michigan Central train upon which the conductors now return to Chicago was in operation and available to them throughout the period they were charged with 3 hours and 15 minutes layovers at Detroit. The conductors conclude that the Carrier acted arbitrarily and unreasonably in both instances, in that it deprived them of compensation, shortened their home layovers, interfered with their accumulation of seniority, imposed burdens upon them not covered by the assignment, and deprived other conductors of assignments to which they were entitled, all in violation of Rules 4, 6, 9, 12, 17 and 20 of the effective Agreement of December 1, 1936.

The Carrier takes the position that Rule 15 authorizes it to set up layovers in regular assignments in its discretion, subject only to the limitation that layovers so established must be prescribed in the appropriate schedule. That the so-called layovers here involved were scheduled is conceded. The question remains, however, as to what constitutes a layover, and what distinguishes it from time held for service. Without undertaking a comprehensive definition of terms, we think it may safely be said that a carrier may not, under pretense of establishing a layover, deprive an employe of advantages or impose upon him burdens that were not reasonably within the contemplation of the contracting parties when the carrier bulletined the position and the employe bid therefor. In support of this view we quote from Award 621, as follows:

"When such an assignment is bid for by a conductor it is conceivable that he may be choosing between it and another. If the carrier could without re-bulletining, from day to day, from circumstances or whim, chop up the assignment so that the actual time and earnings are quite indefinite, the bulletin rules would mean nothing. There is an implied guarantee of the work advertised, the men being ready and willing to perform, until such time as the assignment may be annulled by re-bulletined."

The answer of the Carrier to the above proposition is, of course, that the schedule is in accordance with the assignment, because the conductors knew when they bid that schedules precisely like these might be established. We think, however, that there is at least one factor present here that renders that contention untenable. We refer to Rules 25 to 30, inclusive, which clearly recognize the employes' seniority rights. It can hardly be supposed that the parties contemplated that one rule could be used to destroy another. The rights granted to the carrier by Rule 15 and those granted to the con-

ductors by Rules 25 to 30 are reciprocal and both must be exercised with due regard to the right of the other party. The authority of the carrier to exercise control over the establishment of layovers is no broader than a conductor's seniority rights. We hold, therefore, that the carrier had no right to require the conductors to perform service on the Wabash-Pennsylvania train, outside the district where their names were carried on the seniority roster. This forces the conclusion that the 3 hours 15 minutes here involved were not layovers within the meaning of Rule 15. It is unnecessary to consider whether the rule was violated for any other reason.

What has been said does not apply to the 1 hour 45 minute layovers enforced subsequent to the promulgation of the operating schedule of April 13, 1943. No seniority rights are there involved and no substantial reason has been advanced why that layover does not conform to Rule 15.

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 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 carrier violated the Agreement as indicated in the foregoing Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1944.