

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Jay S. Parker, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS—PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Conductor F. L. DeVol, of the St. Louis District, claims additional wages for service performed in the month of July, 1942. Rules 9, 20 and 24, of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company, are involved.

EMPLOYEES' STATEMENT OF FACTS: Conductor F. L. DeVol, St. Louis District, was a regular-assigned conductor (Rule 20) during the month of July, 1942, operating in Line 3315 between St. Louis, Missouri, and Pueblo, Colorado, and Line 3556, St. Louis and Kansas City, Missouri.

This dispute has been handled in the usual manner up to and including the highest officer designated by the Carrier for that purpose, who has denied the claim. Copy of his decision is hereto shown as Exhibit No. 1. Rules 9, 20 and 24 of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company are involved. Rules 9 and 24 have been violated.

POSITION OF EMPLOYEES: There is in effect an Agreement between The Pullman Company and Conductors in the Service of The Pullman Company dated December 1, 1936, of which the following rules are a part:

"RULE 9. Held for Service.

A conductor held at point away from his home station beyond the layover established for his immediately preceding trip, as provided in Rule 16, shall be allowed hourage credit from expiration of layover up to eight (8) hours for each succeeding 24-hour period. Conductors shall not be allowed hourage credit or pay beyond the expiration of layover at home station except when held for service by direction of the management."

"RULE 20. Regular Assignments—Full Time.

Regularly assigned conductors shall be paid their respective established monthly wages on completion of a monthly assignment of two hundred forty (240) hours or less, and overtime at pro-rata hourly rates for all time in excess of two hundred forty (240) hours to two hundred seventy (270) hours; time in excess of two hundred seventy (270) hours shall be 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?

Conductor DeVol was properly paid for each and every unit of service performed during the month of July 1942.

The Petitioner's claim is without merit and should be denied.

OPINION OF BOARD: It is not necessary to repeat the facts in this opinion or requote the rules involved. The factual situation can be ascertained from the submissions of the respective parties and the rules relied on are there quoted by them.

It should however be stated facts are not in dispute and the only question is whether under the rules of the existing agreement a layover at his home station is applicable where a regularly assigned conductor returns to that location in any assignment other than the one to which he is regularly assigned.

Conductor DeVol had a regular assignment in Line 3556, operating between St. Louis and Kansas City. On a number of occasions, specifically described in the submissions, operating conditions required his return from Kansas City to St. Louis in Line 655. In the operation in his regular line he had a specific layover of 14 hours, 10 minutes in Kansas City, also a specific layover at his home station in St. Louis on its completion at that point. When removed from it and required to operate in Line 655 he came out of Kansas City approximately 14 hours in advance of his regular schedule and arrived in St. Louis approximately 14 to 18 hours, depending on operating conditions, ahead of the time he would have been released from his regular duties. After arrival in St. Louis, in each instance where he was returned there in service other than on his own regular assignment, DeVol was held at home under direction of the Management until his next regular day of departure.

Originally the dispute involved a claim for compensation for trips other than those to which we have just referred but subsequent to its presentation such items were satisfactorily adjusted between the parties. Therefore, there is now for determination only those instances where the claimant was held for service in St. Louis and it is unnecessary to make further mention of them.

Compensation when DeVol was held for service in St. Louis was computed by the Company after application of Rule 16, which is one of several to be found in the contract under the group title of "Reliefs and Layovers," on the theory its terms had application to both "away from home" and "home" stations with the result he was only paid eight hours out of each twenty-four (24) held for service in excess of the two-for-one layover provided for therein. Complainant contends no home layover applies under such rule and that payment should have been made under the provisions of Rule 9, on the basis of eight hours for each twenty-four (24) hours held for service from the time of his arrival home until he next departed in regular assignment.

The Organization cites and relies on Award No. 2063 of this Division involving a dispute similar in principle but based on a somewhat different factual situation. The Company recognizes the force and effect of the award and inferentially at least, admits the facts there do not preclude its consideration here as a precedent and as an indication of an expression by this Division of its then opinion as to the construction to be placed upon Rule 16 *under conditions and circumstances similar to those here submitted for decision*. Simply stated, the real substance of the Company's entire contention is that this Division's conclusion in its former award to the effect Rule 16 applied only to "away from home stations" was erroneous and should be overruled.

One argument advanced in support of the Company's position is based on language to be found in the last sentence of Rule 9, identified as the "Held for Service" rule, which reads:

" . . . Conductors shall not be allowed hourage credit or pay beyond the expiration of **layover at home station**, except when held for service by direction of the Management." (Emphasis supplied.)

It urges that since DeVol did not remain steadily in his regular assignment he had no specific layover in regular assignment as contemplated by Rule 15 of the Contract and argues from its conclusion on that subject that the emphasized portion of the rule just quoted must therefore necessarily refer solely to a layover coming within the scope of Rule 16. With that argument we cannot agree. The proper construction to place upon the quoted provisions is that for time beyond the expiration of layover at home station the conductor is not entitled to hourage credit unless he is held for service by direction of the management. We find nothing in Rule 9, or elsewhere in the contract which supports the construction contended for by the Company. The rule, as indicated by its group title, contemplates the method of ascertainment of credits for hours worked and in no sense has reference to the manner of computing a layover under the provisions of Rule 16 or the effect of reading into it something which is not there, namely the phrase "and at home station" or some other phrase identical in meaning.

Another argument is that held for service time can only be involved in the assignment of a regular conductor while he operates irregularly. The purport of this argument is not entirely clear but we infer the conclusion of its proponent is that because of irregular operation the employe, who, at the direction of the Management performs it, automatically comes within the scope of Rule 16 for layover purposes, irrespective of whether he holds a regular assignment with a specific layover at his home station. The answer to the argument is, that to take from a conductor a home layover which he possesses in regular assignment and substitute another because he has been compelled to temporarily engage in irregular service at the direction of the Management, the rule relied on as the basis for that action must authorize it in clear and concise terms. No language of that character is to be found in the rule in question.

Other contentions are grounded on alleged intention of the parties in preliminary negotiations to have incorporated in the contract a rule of similar character applying not only to "away from home layovers" but to "home" layovers as well, and application, so far as the Company is concerned, of the present one as if such provision was included therein. Arguments advanced in support of contentions based on such premises have been found to be interesting but of little if any probative value in view of the well established canons of construction, recognized by this Division that a contract must be construed as written and in conformity with the terms and provisions to be found therein, and, that continued violation of the requirements of such terms and provisions does not change their meaning or do away with their force and effect.

All arguments to which we have referred, and others of lesser importance, urged by the Company in support of the construction it insists should be placed on Rule 16 have been given careful and respectful attention. The rule itself has been scrutinized and re-examined. We find nothing in rule or arguments to sustain the Company's view or convince us our former decision on the same subject was improper or should be overruled. We, therefore reaffirm the general proposition announced by this Division in Award No. 2063, with respect to the effect of Rule 16 and in the language to be found therein hold:

"This rule is plain and unambiguous. It specifically applies only to 'at away-from-home stations.' To uphold the Carrier's contention we would have to read into this rule 'or at home station.' This we cannot do. This would change the plain meaning of the rule as it now stands."

It follows that for all time Conductor DeVol was held for service in St. Louis he is entitled to the hourage credit provided for by Rule 9 of the current Agreement, and that Rule 16 has no application in determining the amount of such compensation.

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 Petitioner is entitled to compensation for time held at St. Louis as contended for in his submission and the Company's action in computing its amount in conjunction with Rule 16 was in violation of the Contract.

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 17th day of January, 1945.