

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and in behalf of the regularly assigned conductors in Line 328, operating on C&NW Trains 515-514 since March 1, 1946 that the work performed by these conductors from Rochester to Mankato, Minnesota and from Mankato to Rochester, since March 1, 1946, is work performed on specified lay-over and should be paid for under the provisions of Rule 24. We ask adjustment accordingly. Rules 4, 15, 20, 31 and 33 are also involved.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between The Pullman Company and conductors in its service, bearing effective date of September 1, 1945. This dispute has been progressed up to and including the highest officer designated for that purpose, whose letter denying the claim is attached as Exhibit No. 1.

On February 20, 1946 Operation of Conductors form 93.126 was issued, effective March 1, 1946, covering Line 328 "between Chicago and Rapid City", due to resumption of Line 355 between Chicago and Rochester, which had been discontinued July 15, 1945, ODT Order 53. On this form there appears the following:

"This re-establishes Conductor Operation Chicago—Rochester, Line 328."

This conductor operation then handled one Pullman car out of Chicago, destined Rapid City, which was in charge of only the porter between Rochester and Rapid City, except on the trip out of Chicago each Saturday night, when the conductor was instructed to continue through Rochester and terminate his run at Mankato. This conductor operation also handled one Pullman car out of Chicago destined Rochester each trip. During the period July 15, 1945 to March 1, 1946 the Chicago-Rapid City car had been in charge of only the porter for the entire distance between Chicago and Rapid City, so the reason for the conductor being instructed to run through Rochester to Mankato on Saturday nights is not apparent.

On April 4, 1946 Mr. H. C. Kohler, local chairman representing the conductors of the Chicago Northern District, wrote District Superintendent J. C. McCormick, The Pullman Company, submitting claim outlined in Employees' Statement of Claim. Original hearing was held by Mr. McCormick July 22, 1946. The claim was denied by him on September 10, 1946 with the statement that "such operation did not in any manner constitute a violation of any rules of the existing Agreement". Nevertheless on April 18,

rules of the working Agreement will be found. **Rule 4. Basic Month** is not involved in anywise in this dispute. Each conductor regularly performing in Line 328 for a month received a month's pay even though with his trips to Mankato on Sundays he averaged but 193.43 hours of credited service per month. **Rule 15. Layovers in Regular Assignment** has already herein been fully discussed, and we have conclusively shown that instead of having violated this Rule we have complied fully and explicitly with its provisions. The Organization has failed completely to show violation of any of the provisions of **Rule 20. Regular Assignments—Full Time** in the operation of conductors assigned to the Line designated as Line 328. We contend that every provision of this Rule as it applies to this particular operation has been met.

The conductors are claiming pay for work performed between Rochester and Mankato in Line 328 on Sundays under the provisions of **Rule 24. Additional Pay When Used on Layover or Relief Days**. The Rule provides in substance that road service performed by conductors on specified layover days shall be paid for in addition to all other earnings for the month. The Organization has not and cannot show that the conductors assigned to Line 328 performed any work during their layovers at Rochester on week days or in Mankato on Sundays. The conductors operating in the Line had specified layovers at the outlying termini of the Line in Rochester on week days and in Mankato on Sundays. The service performed by the conductors in this assignment between Rochester and Mankato on Sundays was part of their regularly established assignment as shown on their Operation of Conductors form, Form 93.126 (Exhibit B), and was not extra or additional road service work performed on specified layover time. Therefore, Rule 24 is not involved in anywise in this dispute.

Instead of violating **Rule 31. Bulletining of Runs** as contended by the Organization, the Company fully complied with this Rule (See copies of bulletins appearing on pages 3-4 of Exhibit A). **Rule 33. Re-bulletining Changed Runs** is not here involved. In effect, the conductors are contending that when on Sundays the operation extended through from Rochester to Mankato it constituted a changed operation. Such is not a fact. Exhibit B is proof positive to the contrary. It shows the regular outlying termini of the operations to be Rochester six days of the week and Mankato on Sundays.

Thus, we show that the Rules cited by the Organization as being involved in this dispute other than Rule 15 are in reality not pertinent to the basic issue in the claim but are in reality irrelevant and extraneous. The Company submits that it has not violated any Rules cited by the Organization. Further, Management maintains that there is no rule in the Agreement which prohibits the Company from setting up a conductor operation between the home terminal and two away-from-home terminals at which points the conductors have specified layovers.

CONCLUSION

The Company has herein shown that the operation here in question conforms precisely to the provisions of Rule 15. It has further shown the other rules implied by the Organization as having been violated have in reality not been violated and further that they are not pertinent to full consideration of the issue here involved. Further, the Company has shown that the arrangement here complained of has existed for years without prior protest from the Organization. In fact, the assignment has been accepted by the Organization as non-violative of any of the rules of the Agreement between The Pullman Company and its conductors.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents for our consideration the proper interpretation of Rule 15 and Rule 24 of the Current Agreement effective September 1, 1945, which Rules are as follows:

"Rule 15. Layovers in Regular Assignment. Specific layovers shall be prescribed in operating schedules for regular assignments."

"Rule 24. Additional Pay When Used on Layover or Relief Days. Road service performed by conductors on specified layover or relief days shall be paid for in addition to all other earnings for the month. When excess hours are included in payment on day's service basis they shall not be paid for as overtime."

The Company re-established Line 328 March 1, 1946. It was re-established by issuance of Operation of Conductors form 93.126 which specified a layover of eleven hours and forty minutes at Rochester for the conductor on each run except for the conductor leaving Chicago Saturday night. He was required to continue on to Mankato where his run terminated and where he was given a layover of five hours and forty-five minutes before starting the return trip to Chicago.

The Organization contends that the conductor who was required to continue on to Mankato on Sunday was being required to perform "road service * * * on specified layover or relief days" within the meaning of said Rule 24 and should be paid for such service accordingly.

The Organization contends that Rochester was the "specific" terminal on this Line; that Mankato was a "conditional" terminal, only those conductors who left Chicago on Saturday nights being sent on to Mankato; and that Rule 15 contemplates that there can be only one "specific layover" for each trip or "leg" of a conductor's assignment.

It is true that ordinarily there is only one layover on each trip or "leg" of a conductor's assignment; that said layover is ordinarily at the "opposite terminal" on the trip out and at the home terminal on the return trip; and that the regular blank forms used are printed to show only the home terminal and the opposite terminal. However, we find nothing in the Agreement to prevent there being more than one terminal.

Nor can we agree with the contention of the Organization that the Mankato terminal here was "conditional" within the meaning of Award 2601. There the going to another terminal depended upon the necessity of each particular trip, so that the conductor would never know in advance to which terminal he was going.

In question 1 and answer 1 under Rule 24, it would seem that we have an interpretation by the parties which is binding on us in this case. Question 1 was, "What is meant by 'specified layover or relief days'?" The answer of the parties to this question was, "The specified layover as prescribed by Rule 15 and as shown in Operation of Conductors, Form 93.126, that accrues to the immediately preceding trip made by a conductor in his assignment."

Here the operation of conductor's form 93.126 gave the assignment for Line 328. To each conductor assigned to said Line, excepting the conductor leaving Chicago on Saturday night, a layover of eleven hours and forty minutes at Rochester accrued. This was true of the conductor who left Chicago on this assignment for Line 328 on Friday night of each week. The one leaving on Friday night each week would be the immediately preceding trip" to the conductor leaving Chicago on Saturday night. Therefore, the conductor leaving Chicago on Saturday night would also under this interpretation of Rule 24 be entitled to a layover at Rochester of eleven hours and forty minutes.

The fact that the conductor leaving Chicago on Saturday night was required to continue on the run to Mankato and return from Mankato to Rochester makes it necessary for us to sustain this claim.

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 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 Carrier violated the Agreement in requiring the conductor leaving Chicago on Saturday night on Line 328 to continue on to Mankato and return and such conductor should be paid according to Rule 24.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1948.