

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas—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 Conductor C. N. Smith of the St. Louis district that under the provisions of Rule 9-A of the Agreement, Conductor Smith is entitled to seven and one-half (7½) hours credit and pay for each day held between the time he was due to report for regular assignment in Line 6346, St. Louis to New York, 7:45 A. M., November 28, 1945, and was not allowed to go out, and December 12, 1945, when he was notified that he was dismissed from the service of the Pullman Company.

OPINION OF BOARD: The only question for decision in this case is whether Carrier under the rules could withhold Claimant from service pending an investigation of his misconduct which resulted in his dismissal. No question is raised here about the propriety of Claimant's dismissal.

The rule found in a number of agreements permitting a Carrier to hold an employee out of service for a reasonable time during an investigation of alleged misconduct is not contained in the agreement before us. In the general instructions issued by Carrier to car service employees it is provided:

"For a major dereliction of duty or breach of rules, he will be subject to suspension from duty or dismissal."

But there was no penalty of suspension from duty imposed in this case. The only penalty was discharge or dismissal which was imposed on December 12, 1945. Thereafter, as contemplated by the rules, Claimant was given a hearing on January 4, 1946, which resulted in sustaining the penalty imposed.

Claimant relies on Rule 9 (a) which states:

"A regularly assigned conductor held at home station by direction of the management beyond expiration of layover shall be allowed hourage credit and pay up to 7½ hours for each succeeding 24-hour period."

This rule appears to be clear and unambiguous. Carrier argues, however, that it cannot apply to this case because it is found (with some six others) under a heading "Held for Service" and Claimant was withheld from service. However, Claimant was a regularly assigned conductor and was held at his home station by direction of the management. Ordinarily a heading or title is merely descriptive of the rule and not a part of it. It may not

be used to contradict or change the meaning of a rule clearly and definitely expressed.

Under the circumstances of this case the claim must be sustained.

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 has violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 18th day of March, 1948.