

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, 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 on behalf of Conductor G. E. Smith, of the Salt Lake City, Utah District, that the Pullman Company violated Rules 10, 22 and 23 of the Agreement, effective September 1, 1945, between The Pullman Company and its conductors, when on September 16, 19 and 29, and October 1, 3, 5, 7 and 9, 1946, and subsequent dates, Conductor Smith was required by the Company to perform station duty in Pocatello after his arrival on Union Pacific Train Nos. 31-32 in Line 677.

We contend that Conductor Smith should be credited and compensated for this time as provided in Rules 10, 22 and 23, i. e., seven and one-half (7½) hours, a minimum day, for each day that he performed station duty work in Pocatello following his normal release time. Conductor Smith has been credited with the actual hours he worked in Pocatello following his release from duty, as shown by the Operation of Conductors form effective September 11 and November 10, 1946.

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

Effective September 11, 1946, Operation of Conductors Form 93.126 was issued covering Line 677 between Salt Lake and Pocatello, which outlined conductor service as follows:

Outbound U.P. Train No. 31

Home Terminal (Salt Lake)

Report for duty	5:00 P. M.
Receive passengers	5:15 P. M.
Depart	5:45 P. M.

Opposite Terminal (Pocatello)

Arrive	10:20 P. M.
Released from duty	10:35 P. M.
Elapsed time	5:35
Less relief enroute	None
Time on duty	5:35

"MR. BOSEN: We would like to stand on Rule 13 that there is definitely, in the itinerary, a uniform reporting time and release time at Pocatello. The reporting time under the itinerary for this run is 5:00 P. M., arriving at Pocatello 10:20, and a release time 15 minutes later at 10:35, as stated in the itinerary. You can't release with a release time of 10:35 and then the following night set a release time 15 minutes later, or a different figure. The itinerary calls for that time as release."

Clearly, the Organization's representative is referring to a short paragraph contained within the above mentioned rule which states that "A uniform reporting and release time shall be established for each station in each district and agency." It is the position of Management that the Salt Lake City conductor operation designated as Line 677 was set up in full compliance with this provision. As pointed out by the Company's representative (Exhibit No. 1, p. 8), it is intended that all runs shall have uniform preparatory and release time. All itineraries and operation forms are set up on the assumption that the trains involved will operate on time. Indeed, the only basis upon which Management can schedule its operations is upon the basis of on time performance. Management anticipates that exigencies and emergencies necessarily will change scheduled hours of release and departure in any particular assignment. The Organization is clearly in error in contending that a change in release time changes the classification of work involved in the assignment. Trains arriving after 6 A. M. and during hours prior to 12 midnight are properly considered as late arrivals. It would be contrary to the spirit and intent of the Agreement if work incident to late arrivals, necessarily involving late release time in regular assignment, were reclassified as station duty when such arrivals are definitely an anticipated factor in any regular assignment. The Company is surprised that the Organization would be so rash as arbitrarily to attempt to reclassify such work as station duty and additionally claim 7:30 hours, a minimum day's payment, as allegedly accruing thereto.

CONCLUSION

The Company submits that the facts as hereinabove set forth clearly support the premise upon which Management bases its case. Conclusively, Rule 6 is the controlling Rule, and this case is bottomed squarely upon it. The service performed by Conductor Smith upon arrival in Pocatello on the dates covered by this claim was service in regular assignment and properly should be credited under the provisions of Rule 6 and paid under Rule 20 of the Agreement. Further, the Company convincingly has shown that the rules cited by the Organization are nowise applicable to this dispute. The Organization's claim in behalf of Smith is without merit and should be denied.

Exhibits not reproduced.

OPINION OF BOARD: The facts upon which this claim depends are not in substantial dispute. Conductor G. E. Smith held an assignment in regular service in Line 677, operating in U.P. Trains 31 and 32 from Salt Lake City, Utah, to Pocatello, Idaho, and return. The assigned operation was as follows: Report U.P. 31 at Salt Lake City 5:00 P. M., depart 5:45 P. M., arrive Pocatello 10:20 P. M., release at Pocatello 10:35 P. M., layover at Pocatello, report Pocatello 5:10 A. M. next day. U.P. 32 depart 5:55 A. M., arrive Salt Lake City 10:45 A. M., release at Salt Lake City 11:00 A. M. The conductor was issued operating form and itinerary. On and after September 20, 1946, the itinerary contained a provision that the conductor of No. 31 should deliver diagrams, etc., to the conductor on U.P. train No. 11 at Pocatello. Train No. 31 carried two cars from Salt Lake City for incorporation into train No. 11 at Pocatello. It appears to have been the uniform custom of the conductor of No. 31 to remain with his train after arrival and perform the duties incidental to the purpose of the service until he was able to deliver the diagrams, etc., to the conductor of train No. 11.

On the days in question train No. 11 arrived late which necessitated Smith's remaining beyond his assigned release time. The Carrier compensated for his excess time on the basis of continuous service on those days in his regular assignment. The claim is that he was entitled instead to compensation in each such instance for a minimum of 7½ hours for station duty, a new assignment under Rule 10 (b) of the controlling Agreement, as follows:

"(b) When a regularly assigned conductor is required to perform station duty, load trains, or when called and reporting for road service and not used, such time shall be credited on the hourly basis and paid for in addition to all other earnings for the month, with a minimum credit of 7:30 hours for each call, except as provided in paragraph (d) hereof."

Whether this claim is to be sustained or denied appears to depend upon the question of whether under the circumstances the conductor was called upon to perform service in another assignment or in service necessarily incident to release from his regular assignment.

There can be no doubt that on those occasions when train No. 11 was on time that the mentioned service was treated as incidental to the assignment. When train No. 11 was late that was also of necessity under conditions obtaining at Pocatello an incident of the assignment performed with delay.

It is suggested as against this that after arrival he was required to lift transportation for these cars which where to go forward on train No. 11. This does not alter the conclusion arrived at. Rule 10 (c) provides in part as follows:

"(c) Conductors, within the spread of their assignment, may be required to lift transportation for cars other than those they will handle on the road without additional credit or pay, but their responsibility therefor shall cease when released from receiving service.

* * *."

If he engaged in receiving service he was required to do so under this provision. The cars were, from that point on, other than cars to be handled on the road by this conductor. The work performed was within the spread of the assignment.

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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of April, 1948.

DISSENT TO AWARD 3844—DOCKET PC 3761

The Opinion accompanying this Award gives recognition to the fact that Claimant occupied an assignment in regular service and that after arrival at opposite terminal he remained on duty, by instruction of the Carrier, beyond his assigned release time. Yet the conclusion is reached, in direct conflict with the provisions of Rules 13 and 15, that the service performed after arrival at Pocatello was "an incident of the assignment performed with delay", and that "the work performed was within the spread of the assignment."

This conclusion also runs counter to expressions of this Division in Opinion accompanying Awards 621 and 1662, and is contrary to principles dealt with in Rule 24. It sets aside the definite release provided by the Operation of Conductors form governing Claimant's assignment.

For these reasons we dissent from the finding of the majority.

W. G. CANTLEY