

Award No. 5735

Docket No. PC-5753

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Claim of the Order of Railway Conductors, Pullman System, for and in behalf of Conductor R. M. Sheppard, Kansas City District, that The Pullman Company violated Rules 10 (b) and 22, when

1. Under date of August 21, 1948, Conductor Sheppard was assigned to perform Station Duty in Kansas City from 12:01 A. M. to 1:00 A. M. August 22; he was credited and paid for his service, as provided in Rules 10 (b) and 22, i.e., 7:30 hours, or \$16.21. On the first half of September payroll, the Company deducted from Conductor Sheppard's pay \$16.21, the amount paid for performing the above mentioned Station Duty. The Company failed to specify the rule under which Conductor Sheppard's time was changed, and to give the proper information, as provided in Rule 57 of the Agreement.

2. We now ask that Conductor Sheppard be credited and paid 7:30 hours, as provided in Rules 10 (b) and 22. In other words, return the \$16.21 which was deducted from his earnings for the first half of September, 1948.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in the service of The Pullman Company, dated September 1, 1945, revised Effective January 1, 1948. This Rules' Agreement will be considered a part of this Statement of Facts.

Various rules thereof may be referred to herein from time to time without quoting in full.

This dispute has been progressed in accordance with the Agreement. Decision of the highest officer designated for that purpose, denying the claim, is attached as Exhibit No. 1.

The facts necessary to a determination of this dispute are, as follows:

Under date of August 21, 1948, Conductor R. M. Sheppard, a regularly assigned conductor of the Kansas City District, while on his specified layover in Kansas City, was assigned to perform Station Duty from 8:15 P. M. to 11:59 P. M. Copy of "Assignment to Duty" slip attached, as Exhibit No. 2. Rule 10 (b) reads, as follows:

under which the time as corrected was computed. An examination of Conductor Sheppard's timesheet for first half September 1948 (Exhibit D), duplicate of which was furnished Sheppard with his check covering the period in question, shows that Sheppard was informed that the deduction was being made because in the second half of August he was "Overpaid 7:30 station duty" and "Overpaid 7:30 P.M. Overtime." Inasmuch as Rule 10 **Station Duty** and Rule 22. **Extra Service** are the Rules which set forth the manner in which conductors are credited and paid for station duty, it is clear that Sheppard was put on notice as to the rules involved in the deduction which was being made. Also the fact should be noted that Sheppard's entry for station duty on August 22, 1948, was not verified by the district office (Exhibit A, p. 1). This fact was known to Sheppard. Further, the record establishes that prior to his release from his station duty assignment at 1:00 A.M. August 22, he already had raised a "fuss" about being paid for a second call (Exhibit A, p. 6), and was fully aware that payment therefor would not be forthcoming. It is the Company's opinion that the inclusion of this matter in the Organization's claim to the Board merely beclouds the issue presently before the Board and does not show good faith on the part of the Organization.

The Company is surprised that the Organization would progress a claim of this kind to the Board. In prior instances the Organization has challenged Management's right to combine two different types of service: i.e., deadhead service and regular service, and couple them for pay purposes. In a dispute settled under Award 3754 the Organization claimed the deadhead service and the regular service performed by an extra conductor in filling in in a regular assignment should be considered as two separate assignments and credited and paid on that basis. The claim was denied by the Board. In this dispute, the Organization is taking a still more unreasonable position and is asserting that the Company cannot extend the time period of a conductor's station duty assignment as set forth on his Assignment to Duty slip and credit and pay it as a single assignment but must for pay purposes consider it as two separate assignments, with a minimum credit and pay of 7:30 hours for each assignment. The Company submits that there is no basis in the rules in the Agreement for this manner of payment. "Feather bedding" of this type cannot be condoned.

CONCLUSION

The Company submits that the facts that herein above set forth clearly support Management's position in this dispute. No Rule of the Agreement requires Management to credit and pay Conductor Sheppard in the manner contended for by the Organization. Sheppard was credited and paid 7:30 hours for the 4:45 hours' station duty assignment, which assignment comprehended the hours 8:15 P.M. August 21 to 1:00 A.M., August 22, 1948, in accordance with the provisions of Rules 10 and 22. Further, Conductor Sheppard was adequately informed of the reason for the hours disallowed. The claim in behalf of Conductor Sheppard is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employee or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is here made that Carrier improperly considered work performed in station duty as a continuous assignment, when actually two separate assignments were worked, and compensable as such, with the meaning of Rules 10 (b) and 26.

The Organization's Statement of Facts contains the following:

"Conductor Sheppard completed his tour of Station Duty from 8:15 P.M. to 11:59 P.M., August 21, 1948, as instructed. He entered the correct time data on his time sheet for the last half of August,

i.e., 7:30 hours under the On-Duty column of his time sheet. After Conductor Sheppard had completed his tour of Station Duty, the Pullman Night Agent on duty at the Union Station instructed Conductor Sheppard to begin another tour of Station Duty starting at 12:01 A. M., August 22, 1948, * * *."

One might conclude from the above that the first assignment (if in fact there was only one) was completed by the Claimant prior to his being given instructions to work beyond the time limits thereof, (or to commence a second assignment as the case may be).

The Carrier in commenting on the above quoted contentions of the Organization states:

"* * * If the facts were as stated by the Petitioner, this claim would not be before the Third Division. The Company would have long since allowed the claim of the Organization in the same manner that it allowed the claim of Conductor C. R. Christy, * * *."

However, it is contended by the Carrier that instructions were given Claimant that he was being held over on his first assignment, such instructions being conveyed to him prior to the expiration of said assignment.

Thus, this Board is confronted with an irreconcilable conflict of pertinent and essential evidence.

This Board has consistently held that it is not the function or duty of this tribunal to resolve conflicts in evidence.

The issue herein is referred back to the parties, without prejudice, in order that the discrepancies in the record may be resolved and the claim considered by the parties in accordance therewith.

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

The claim is remanded without prejudice.

AWARD

Claim disposed of as per above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of April, 1952.