Award No. 6029

Docket No. PC-6147

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, 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 Conductors W. M. Hadley, H. P. Odom and A. W. Hyatt, and for and in behalf of certain extra conductors, San Antonio District, that:

1. During the period April 29 to May 31, 1951, inclusive, Conductors W. M. Hadley, H. P. Odom and A. W. Hyatt, San Antonio District, were assigned to the conductor run on T&NO Trains Nos. 8-171 and 172-7, designated as Line 3497, which assignment included relief periods of three hours in each direction. Certain extra conductors were also assigned as relief conductors to this Line in the course of the period named.

2. Conductors W. M. Hadley, H. P. Odom, A. W. Hyatt and each extra conductor employed in this Line be credited and paid under applicable rules for three hours for each trip made in either direction during the period named.

3. During the period April 29 to May 31, 1951, inclusive, both regular and extra conductors assigned to this run were required to perform Station Duty, receive for cars on SP Train No. 6, including local Houston-New Orleans car, Line 3491, beginning at 8:30 P. M. in the Houston depot.

4. Conductors W. M. Hadley, H. P. Odom, A. W. Hyatt and each relief conductor, employed for the receiving service described in paragraph 3 above, be credited and paid for seven hours for each performance of such receiving service in the period named.

5. Rules 6, 10, 12, 13, 22, 25 and 38 have been violated.

Additional coroboration of the above-stated principle is contained in Award 1397 of the Third Division as follows:

> "The practice complained of is one of long standing. During its continuance there have been revisions of the contract, without correction, if correction be needed, of this practice. That is persuasive that, for eleven years or more, the employes themselves have not regarded it as a violation of their contract."

Consideration should also be given to Third Division Award 2436, in which Award, under **OPINION OF BOARD**, the Board held as follows:

> "Where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforcible to the same extent as the provisions of the contract itself. See Awards Nos. 507, 1257 and 1397."

CONCLUSION

The record in this dispute supports the position of the Company. The Company has shown that none of the rules cited by the Organization supports its position in this dispute. The Company has further shown that the operation in question was in effect for many years without protest from the conductors' Organization. This Board has repeatedly held that the burden of showing a violation of the Agreement rests with the Organization alleging the violation. In this dispute the Organization has failed to meet that burden. This Board in its **OPINION** in Award 4758 made the following statement:

> "The Claimant in coming before this Board assumes the burden of presenting a theory which, when supported by the facts, will entitle him to prevail. The Board cannot accept the burden of finding a reason to grant relief when the Claimant fails to make out a case. See Awards Nos. 4011, 3523, 3477, 2577."

The Organization in this dispute has advanced no theory supported by facts which would entitle it to prevail. The claim is without merit and should be denied.

The Company affirms that all data submitted herewith in support of its position have heretofore been submitted in substance to the employes or their representative and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants held an assignment involving the handling of a car or cars on Trains 7 and 8 between San Antonio and Houston, and the handling of a different car or cars on Trains 171 and 172 between Houston and Galveston. The position of the Organization that such was not a proper assignment under the rules is based in part upon the proposition that, while conductors of one seniority district may properly be given an assignment to service originating in their own seniority district which carries them into or through other seniority districts, it is only proper where the train or Pullman equipment is operated through between the points involved. We find no rule in the Agreement which supports that proposition and, since this same assignment has been in effect most of the time since 1936, it may not properly be said that past practice supports it.

This position of the Organization is also based in part upon the proposition that the service between Houston and Galveston properly belonged to conductors in the Houston seniority district under the seniority rules and could not properly be assigned to conductors of the San Antonio seniority district. We are not here confronted with a claim by Houston District conductors but by a claim relating to the pay due to the conductors

who accepted the assignment and performed the service. Thus, we decline to pass upon that contention because even if correct it could hardly affect the application of the pay rules to the service performed.

This was not a new assignment so our Award No. 4647, relied upon by the Organization, is not applicable.

Since the elapsed time in each direction on this assignment was more than 12 hours, the three-hour relief for rest enroute was proper under Rule 13 and the claim for pay for such time is without merit.

There is also a claim for pay for station duty at Houston due to these conductors being required to receive for cars on S.P. Train No. 6 until arrival of that train. Since the assignment did not provide a layover period at Houston and since no rule requires the establishment of a layover period at that point, such service was performed within the spread of their assignment and hence under Rule 10 (c) constitutes service which may be required without additional credit or pay.

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 Employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1952.