

**Award No. 6090**

**Docket No. PC-6148**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Dudley E. Whiting, Referee**

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**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 W. P. Johnson, Philadelphia District, that:

1. The Pullman Company violated Rule 20 of the Agreement between The Pullman Company and its conductors in computing Conductor Johnson's wages for the month of February, 1951, with special reference to the credit allowed for February 8, 1951. Question and Answer 2 to Rule 20 is directly involved; Rule 5 is also involved.

2. Alternatively, The Pullman Company violated Rule 9 of the Agreement between The Pullman Company and its Conductors in computing Conductor Johnson's wages for February, 1951, with special reference to the failure to credit held-for-service time on February 8, 1951.

3. A recheck be made of Conductor Johnson's time sheet (Form 93.952, Rev. 3-49) for the month of February, 1951, and that he be credited and paid in accordance with all applicable rules including, specifically, Rule 20, or, alternatively, Rule 9.

**EMPLOYEES' STATEMENT OF FACTS:** I. On February 1-3, 1951, Conductor W. P. Johnson, Philadelphia District, under assignment to a run designated as Line 2368 performed a round trip Philadelphia to Erie, Pa., and return, including assigned layovers. (Exhibit No. 1, copy of Operation of Conductor form 93.126, dated Jan. 27, 1951) Conductor Johnson was credited with one day for each of these three days.

On February 4, 1951, Conductor Johnson was assigned to, and performed, a relief day on Line 2368 at his home terminal, Philadelphia. He received one day's credit for February 4th.

On February 4 Conductor Johnson was displaced from the run designated as Line 2368 and then, under the provisions of Rule 37, displaced into the run designated as Line 6551, Philadelphia to Pittsburgh. (Exhibit No. 2, copy of Operation of Conductor form 93.126 dated January 1, 1951).

Johnson would be entitled to hourage credit and pay up to 7 hours for the 24-hour period which comprised his relief day. Rule 9 (a) reads as follows:

**"RULE 9. Held-for-Service.** (a) A regularly-assigned conductor held at home station by direction of Management beyond expiration of layover shall be allowed hourage credit and pay up to 7 hours for each succeeding 24-hour period. An extra conductor held at home station by direction of Management shall be allowed the same hourage credit and pay."

In response to this claim by the Organization, Management contends initially that the Third Division, National Railroad Adjustment Board, has no jurisdiction to hear or consider the claim for held-for-service credit and pay. Under the provisions of Rule 51. Claims of the applicable working Agreement, when a conductor considers that any rule of the Agreement has been violated, he or his duly authorized representative may present a claim of rule violation to his district representative. No claim for held-for-service credit and pay was embodied in the original letter of claim in behalf of Conductor Johnson (see Exhibit D, p. 1). Thus, the Organization's claim for held-for-service has not been handled on the property of The Pullman Company in the manner provided by the applicable collective bargaining contract. Section 3, First, (i) of the Railway Labor Act, as amended, reads as follows:

"(i) The dispute between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

In view of the fact that the Organization has failed to handle its claim for held-for-service in behalf of Conductor Johnson in the usual manner up to and including the chief operating officer of the Carrier, the Company respectfully submits that the Third Division, National Railroad Adjustment Board, cannot, under the provisions of the Railway Labor Act, take cognizance of it.

While reserving its right to contest the jurisdiction of the Board on this point, Management wishes briefly to point out to the Members of the Board that Conductor Johnson is not entitled to any credit or pay under Rule 9. Rule 9 is not applicable where an employe enters into an assignment, either by displacement or by bid. It is generally recognized in the railroad industry that an employe must bear any wage loss occasioned by his exercise of seniority rights. Further, Conductor Johnson was not held at home station by direction of Management. In displacing into the assignment in Line 6551, Conductor Johnson accepted the terms and conditions of the assignment as set forth in the operating schedule (Exhibit A). Thus, during the period that Johnson remained in his home terminal on his relief day he was not held for service by direction of Management. He was merely conforming to the schedule for his assignment. Under these conditions, Management submits, Rule 9 has no application.

The Company affirms that all data presented herewith and in support of its position have heretofore been presented in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced).

**OPINION OF BOARD:** Claimant was assigned to Line 2368 and was displaced under Rule 37 prior to the expiration of his layover on February

4, 1951. He then exercised displacement rights onto Line 6551 which was scheduled for a cycle of 19 days consisting of six round trips and a relief day. At the time claimant started service on that line five round trips of the cycle had been completed by the conductor he displaced so after one round trip the scheduled relief day occurred.

It is the credit for such relief day which is the principal basis of the claim but it appears that such day was properly prorated and credited in accordance with Rule 19.

It is contended that since claimant held a regular assignment on each day during February that he is entitled to be paid under Rule 20, which provides in part:

“Regularly-assigned conductors shall be paid their respective established monthly wages on completion of a monthly assignment  
\* \* \* of 210 credited hours or less. \* \* \*”

It appears to us that claimant did not complete a monthly assignment because he worked part of the month on one assignment and was displaced from it. Then he displaced into another assignment and worked part of the month on it. Such service is clearly covered by Rule 21 which establishes the method of computing the pay of “conductors working part time on regular assignments”.

However it is also contended that Question 2 and Answer 2 under Rule 20 would be applicable to any day of the month so that one moving into an assignment after noon of any day would be subject to Rule 20 if his layover from his prior assignment extended past noon of that day. That Question and Answer very clearly and unambiguously relate only to the first day of the month, confirm that the Rule contemplates a full month's service on an assignment and preclude any intention to consider one entering upon an assignment after the first day of the month as a full time conductor.

The claim alternatively asks for allowance of compensation under Rule 9, held for service. Certainly one is not held for service on a regularly scheduled relief day of an assignment unless held beyond the expiration of the scheduled layover. Such was not the case here and the claim is without merit.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 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 24th day of February, 1953.

## DISSENT TO AWARD 6090—DOCKET PC 6148.

In this Award the majority has erroneously interpreted Rule 20 as being applicable only where a Conductor occupies a single assignment during the month, which holding is not in accord with the clear language and purpose of the Rule, the underlying principle of which is to establish a monthly wage for Conductors who maintain a status in regularly assigned service during an entire month.

The majority ignores the fact that the named Conductor completely fulfilled the requirements of each of the two assignments occupied during the month of February, 1951. It erroneously applies the rule to an assignment rather than to the Conductor.

Claimant worked full time in regular assignment, i.e., every day in the month during the entire month, as "Rule 20, Regular Assignments—Full Time" contemplates.

He completed a monthly assignment as a "regularly-assigned Conductor" and was entitled to be credited and paid as such in accordance with Rule 20. The Carrier has so recognized but the majority holds that the facts of record in this individual case must govern, and no such recognition has been shown therein.

For the above reasons the Award is in error.

/s/ R. SARCHET.