Award No. 6110
Docket No. PC-5994

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, 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. L. Plemmons, Denver District, that The Pullman Company violated Rules 6, 13, 22 and 23 of the Agreement between The Pullman Company and its Conductors, when:

1. On December 13, 1950, Conductor Plemmons was given an assignment to deadhead on pass on UP 370 to Limon, Colorado, where released. He was then given an assignment to report at Limon at 6:25 A. M. daily December 14, 1950, through January 11, 1951. He was to handle all cars on Rock Island #7-8, Limon to Colorado Springs, and return. On completion of last round trip into Limon, he was assigned to deadhead Limon to Denver, carrying time continuous.

2. We now ask that Conductor Plemmons be credited and paid under the rules of the Agreement for 7:30 hours, a minimum day, for the trip on December 14, 1950, Limon to Colorado Springs and for 7:30 hours, a minimum day, for the trip Colorado Springs to Limon, total 15 hours. Conductor Plemmons was paid 8:15 hours for these two trips; we now ask that he be paid an additional 6:45 hours for these two trips. We also ask that he be credited and paid a minimum day, 7:30 hours, for each trip Limon to Colorado Springs and 7:30 hours for each trip Colorado Springs to Limon, less the 8:15 hours paid, for each subsequent day to Dec. 14, 1950, to and including December 31, 1950.

3. We now ask that Conductor Plemmons be credited and paid under the rules of the Agreement for 7:00 hours, a minimum day, for the trip on January 1, 1951, Limon to Colorado Springs, and for 7:00 hours, a minimum day, for the trip Colorado Springs to Limon, total 14 hours. Conductor Plemmons was paid 8:15 hours for these two trips; we now ask that he be paid an additional 5:45 hours for these two trips. We also ask that he be credited and paid a minimum day, 7:00 hours for each trip, Limon to Colorado Springs, and 7:00 hours for each trip, Colorado Springs to Limon, less 8:15 hours paid, for each subsequent day to January 1, 1951, to and including January 11, 1951.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in its service, effective

OPINION OF BOARD: The record discloses that extra conductor C. L. Plemmons, Denver District, was given an assignment to duty slip December 13, 1950, in substance as follows: Deadhead on pass from Denver on Union Pacific Train 370 to Limon, where released. Report at 6:25 A. M., daily at Limon December 14, 1950, to January 11, 1951, and handle all cars Rock Island Trains 7 and 8 to Colorado Springs and return. On January 11, 1951, continue deadhead first available train to Denver where released. Time continuous January 11, 1951. Limon and Colorado Springs are outlying points in the Denver District and assignments of conductors are made at Denver.

In this extra service Conductor Plemmons operated as follows: Report Limon 6:25 A. M., arrive Colorado Springs 8:35 A. M., depart Colorado Springs 12:45 P. M., arrive Limon 2:25 P. M., release from duty Limon 2:45 P. M. Total elapsed time 8:15 hours. For this extra service performed the claimant was paid on a continuous-time basis 8:15 hours, with further credit of 45 minutes for held-for-service time each day at Limon between 5:40 A. M., and 6:25 A. M., as provided for in Rule 9 of the Agreement. This 45 minute held-for-service time is not involved in this dispute, nor is there involved in this dispute the deadhead trip from Denver to Limon for which the claimant was credited and paid a minimum under Rule 23.

It is the position of the Employes that the Carrier violated Rules 13 and 23 of the Agreement when the Carrier assigned extra Conductor Plemmons to operate on a continuous-time basis for a trip Limon to Colorado Springs and return to Limon on December 14, 1950, and subsequent dates thereto; that as a result of this violation Conductor Plemmons is entitled under Rules 22 and 23 to credit and pay for a minimum day Colorado Springs to Limon for the period December 14, 1950 to January 11, 1951.

The Carrier takes the position that it is permissible under the rules of the Agreement to combine extra road trips between outlying points in the same district on a continuous and turn-around basis, and that no rules of the Agreement were violated by the Carrier in assigning the Claimant in the manner in which he was assigned. In this connection the Carrier relies on Rule 38.

The rules cited will be discussed subsequently in the opinion.

The Employes primarily rely on Rules 13 and 23, and cite that part of Rule 13 as follows: "A uniform reporting and release time shall be established for each station in each district and Agency."

The Employes point to the evidence in the record, which has been examined, to show that the Carrier established a uniform reporting and release time over a period of several years both in Limon and Colorado Springs, outlying points of the Denver District, both prior to and subsequent to the filing of this claim. Basically stated, there was an established uniform reporting and release time both in Colorado Springs and Limon. Colorado Springs release time 15 minutes, reporting time 15 minutes; Limon reporting time 5 minutes, release time 20 minutes. The Claimant performed no work or service while laying over at Colorado Springs from 8:50 A. M., the hour he was released from duty, until noon, the hour he reported for duty on the dates heretofore set out. He was instructed to carry his time as continuous service, which he did, showing a release at Colorado Springs as 8:50 A. M., in conformity with Rule 13, and showing time of reporting for return trip Colorado Springs to Limon at 8:50 A. M., instead of noon, which is in violation of the uniform reporting time of 15 minutes before the reception of passengers. The Employes contend that Claimant's assignment was improper to extra service from Limon to Colorado Springs and return on a continuous time basis; that he could only be assigned properly for extra service from Limon to Colorado Springs, and then assigned for another extra service trip from Colorado Springs to Limon, observing the established normal release and reporting times at both stations; and that where a uniform reporting

and release time has been established under Rule 13, a conductor cannot be held on duty in contravention of the rule.

The Carrier cites Rule 38, titled "Operation of Extra Conductors. (a) All extra work of a district, including work arising at points where no seniority roster is maintained but which points are under the jurisdiction of that district, shall be assigned to the extra conductors of that district when available, except as provided in paragraph (e)." (This paragraph is not pertinent in this dispute). "(b) Extra conductors shall be furnished an assignment slip showing time and place required to report for duty, also destination."

The Carrier holds that the assignment to duty slip furnished Conductor Plemmons, as provided for in Rule 38 (b), is controlling as against Rule 13; that Rule 13 is titled "Rest Periods En Route" and in its relation to the other rules establishes that the requirement for a uniform reporting and release time has application only when the question of a deduction for rest period en route is involved; and since no deduction for rest was made from Claimant's time while he was working the assignment given him, the uniform reporting and release time was not relevant.

It is true that Rule 13 is titled "Deductions", however, we believe the paragraph of Rule 13 cited by the Employes is explicit in its terms and requires a uniform reporting and release time as contended for by the Employes in the instant case, and Rule 38 does not supersede such portion of Rule 13.

Rule 23 is titled "Minimum Payments. Conductors in extra road service or deadheading on passes or with equipment or in combinations of any such services who perform less than 7½ (7:00) hours' service from reporting time until released shall be credited and paid not less than 7½ (7:00) hours, a minimum day. Q-1. Is it permissible to couple deadhead trips of less than 7½ (7:00) hours and extra road service and treat such combined service as a single movement? A-1. Yes, provided the conductor is not released between the different classes of service, and this combining of services is not used for the purpose of making a deduction for rest en route."

The Carrier asserts that under Rule 23, question and answer No. 1, if the conductor's time is carried on a continuous basis then the Carrier is permitted to combine deadhead service and other extra service, and that the uniform reporting and release time was not intended to affect the mannr of crediting and paying conductors except insofar as it precluded Management from making sleep deductions. We are not in accord with the Carrier's contention as it applies to the facts in the instant case. There is no authority in the Agreement which permits holding an extra conductor on duty after arrival and after the established release time for the purpose of coupling two extra service trips.

Rule 22 provides: "Conductors shall be paid at their respective established hourly rates for all hours credited each month for extra road service, deadhead on cars, deadhead on passes, extended special tours, station duty, witness duty, held for service, called and not used and all other non-road service. Time credited in excess of 235 hours each month shall be paid for at the rate of time and one-half." Under the current Agreement it is 220 hours instead of 235 hours. Question 1 under this Rule: "What is 'extra road service'?" Answer 1. "'Extra road service' is any revenue producing trip * * * not covered by a conductor's regular assignment."

The employes contend the trips as proviously mentioned are revenue-producing trips, and the claimant performed two periods of road service as defined by Rule 22, but these extra road service trips are separated by a period when he should have been released in conformity with that part of Rule 13 cited by the Employes.

Rule 22 and Rule 13 provide a basis for the proper application of Rule 23.

Rule 6, titled "Regular and Extra Service" provides: "Time for regular and extra service (except extended special tours and deadhead service) shall be credited from time required to report for duty until released, subject to the deductions provided for in Rule 13."

The only provision of Rule 6 in dispute between the parties is as to whether the deductions provided in Rule 13 have been properly met.

It is apparent that Rule 13 is controlling. The Carrier cannot justify the Claimant's assignment on the grounds it conformed to Rule 6.

The Employes cite Award 4659. This Award involved the same rules as in the instant case, and substantially the same arguments were presented by the parties. The two issues involved were as follows: Could the Management of the Washington District office properly assign a Washington District extra conductor while still in Washington to extra work which originated in the Pennsylvania terminal district, New York, and could Management of the Washington District properly assign such extra conductor on a round trip continuous-time basis, designation Washington, and credit and compensate him on a continuous-time basis without violating Rules 13, 14, 22, 23, and paragraph (b) of Rule 38? The Board held that authority did not exist for short-circuiting the assignment and sign-out rights appropriately belonging by the Agreement and the Memorandum of Understanding to the New York District, as was done in the case. These rules or sections do not stand alone and separate; they must be considered together.

The Carrier contends that the instant case is distinguishable from Award 4659 for the reason that the Claimant here was given a round trip assignment which contemplated round trips in extra service between Limon and Colorado Springs, both of which are outlying points under the jurisdiction of the Denver District, and did not involve the sign-out rights of conductors of two separate districts where seniority rights of such conductors might be affected. The facts in Award 4659 do involve two seniority districts. We believe that that part of the award discussed is pertinent here because in each instance the Carrier attempted to use a continuous-time assignment as a means of circumventing other provisions of the Agreement, and in this respect there is no difference in the principle of the two cases, and the Award supports the Employes' contention to the extent here indicated.

For the reasons given in this opinion we conclude the claim should 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 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 claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1953.

DISSENT TO AWARD 6110, DOCKET PC-5994

The Award herein is in error and entirely devoid of precedent value on any point raised therein for the following reasons:

1. It is based upon the erroneous premise that Rule 13 is applicable to the instant case, under which rule the majority alleges Claimant was released at Colorado Springs at 8:50 A. M. on the dates he operated in service as shown herein.

That premise manifestly is in error because Award 6111, rendered this same date by this same Referee and involving the same parties, recognized that Rule 13 was not involved covering a circumstance similar to the one involved in the instant case.

Award 6111, supra, recognizes that Rule 23, Question and Answer 1, permits combining trips and treating them "as one movement where the conductor is not released but is paid for continuous time," Rule 13 to the contrary notwithstanding. In support thereof, the majority cite Award 3754.

In Award 6111, supra, notwithstanding the Carrier assigned Claimant on a continuous time basis, the Claimant therein showed a release at Altoona at 1:45 A. M. from a deadhead trip Minneapolis to Altoona, the latter being the turn-around point (comparable to Colorado Springs in the instant case), and showed a reporting time of 1:45 A. M. the same date for the return trip. However, he did not depart from Altoona until 6:00 A. M. and performed no service at Altoona in the interim.

In its original submission in the case covered by Award 6111, the Organization admitted "It was proper to couple the deadhead trip from Minneapolis to Altoona * * * with the extra service trip * * * Altoona to Duluth." While the Organization attempted to repudiate its admission in this respect in its oral statement by alleging a violation of Rule 13, the decision of the majority in Award 6111 was as follows on that particular issue, which is similar to the sole issue involved in the instant case:

> "There is no dispute but that the Carrier had the right to couple the deadhead trip Minneapolis to Altoona, which was three hours, with the extra road trip of 11:05 hours Altoona to Duluth. This is permitted under question and answer No. 1, Rule 23."

Thus the majority in Award 6111 concede that the assignment given a conductor by the Carrier governs whether or not his time is continuous, notwithstanding he shows a concurrent release and reporting time at an intermediate or turning point and departs therefrom more than an hour thereafter without performing any work at such point.

In the instant case, the majority erroneously infers that Rule 23, Question and Answer 1, does not permit coupling two trips **in the same class of service.** That inference is in error because Rule 23, in clear and unambiguous terms, permits combinations of service trips, or combinations of deadhead and service trips, on a continuous time basis. Question and Answer 1 thereunder prohibits combining deadhead and service trips in the event a conductor is released between such trips in these different classes of service. However, there is nothing in Rule 23 which prohibits combining trips in the same class of service even if a conductor is released between such trips. Furthermore, the fact that Claimant herein showed a concurrent release and reporting time of 8:50 A. M. at Colorado Springs does not invalidate the continuous time basis on which he admittedly was assigned; see Awards 6111 and 3754, supra.

The majority premise herein about Rule 13 being applicable also is in error because Rule 13 appears in the Agreement under the heading "Deductions" and is captioned "Rest Periods Enroute". It is a special rule

which permits the Carrier to deduct rest periods allowed enroute from continuous time payments under Rules 6 and 23, computed from time required to report for duty until released "where the spread of the trip includes the hours from midnight to 6 A. M."

The majority admits Claimant herein operated as follows:

> "Report Limon 6:25 A. M., arrive Colorado Springs 8:35 A. M., depart Colorado Springs 12:45 P. M., arrive Limon 2:25 P. M., release from duty Limon 2:45 P. M."

Thus the spread of Claimant's trip herein did not include the hours from midnight to 6 A. M. and he was not released at Colorado Springs. Consequently, Rule 13 is not applicable. In such circumstances, Rule 13 has no control over Rule 6, 23 or any other rule.

Furthermore, no deduction for rest periods was permissible under Rule 13 in the instant case and the docket herein does not show, by inference or otherwise, that any such deduction was made. On the contrary, the quoted admission, supra, and Claimant's Assignment To Duty slip herein disclose that he was assigned and paid on a continuous time basis for the service from Limon to Colorado Springs and return. Consequently, there is no dispute in connection with Rule 6 between the parties hereto which involved the deductions provided for in Rule 13 as alleged by the majority herein.

2. The instant Award (6110) is based upon the further erroneous premise that Award 4659 is pertinent to the instant case. That premise is in error because the Organization based its claim in the case covered by that Award on Rule 38 (a) which Rule, with certain exceptions, protects work to conductors of a particular district. The majority in the instant case admits that Rule 38 (a) is not pertinent in this dispute.

For the foregoing reasons we dissent.

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ R. M. Butler