Award No. 6315

Docket No. PC-6279

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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 F. C. Farnam, Chicago-East District, that The Pullman Company violated Rule 13 of the Agreement between The Pullman Company and its Conductors, when:

1. On the first half of September, 1951, payroll, $5.08 was deducted from Conductor Farnam's pay, the Company holding that this amount was deducted for rest en route on the morning of July 11, 1951.

2. We contend that no rest deduction could be made for the 11th, as the road trip did not cover the period from 12:00 Midnight to 6:00 A. M. on the 11th.

3. We now ask that Conductor Farnam be reimbursed for the $5.08 deducted.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in its service, effective January 1, 1951; various rules thereof will be referred to therein, without quoting in full.

This dispute has been progressed up to and including the highest officer of the Carrier designated for that purpose, whose letter denying the claim is attached as Exhibit No. 1.

Shortly before September 26, 1951, Superintendent J. B. Kenner, in an undated letter, wrote to Conductor Farnam as follows:

"Quoted below is information received by me from our Auditor showing that in checking your time sheet for the month of July, the following discrepancy was found:

'On trip arriving Chicago July 10 was on the road 3 nights but received only 2 hours rest night of July 10. He thus had total rest period of 10 hours but only 8 hours deducted, resulting in over-payment of 2 hours in his excess

ber 26, 1951, to Superintendent Kenner (Exhibit B, pp. 4-5). In that letter Conductor Farnam, in referring to the trip of July 8-11, 1951, made the statement thate he "had been on the road three (3) nights." If Conductor Farnam was on the road three nights, as he admits he was, the Company under the provisions of Rule 13 was privileged to make a maximum rest deduction of four hours for each of those nights, or a total of twelve hours for the trip. Since the Company deducted only ten hours, the number of hours' rest Farnam actually received, the conductor has no cause for complaint.

The Petitioner does not deny that Conductor Farnam received two hours' rest on the third night of the trip of July 8-11, 1951. The Petitioner contends that despite the fact that Conductor Farnam received that rest the Company cannot properly deduct it in computing his time for the trip. The Petitioner takes the position that even though Conductor Farnam received ten hours' rest on the trip in question, the Company can properly deduct only eight hours' rest. In other words, the Petitioner demands that the Company pay Conductor Farnam for more hours than the conductor actually worked on the trip. Since Farnam actually received the number of hours' rest represented by the Company's deduction, and since the deduction for rest was entirely proper under the provisions of Rule 13, the Company maintains that the claim in behalf of Conductor Farnam is without merit and should be denied.

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

(Exhibits not reproduced)

OPINION OF BOARD: Conductor F. C. Farnam reported for duty in Los Angeles at 6:45 P.M., July 8, 1951, for a trip to Chicago. His train was delayed en route with the result that it arrived in Chicago at 4:30 A.M. (release time 4:50 A.M.), July 11, instead of at 1:45 P.M. July 10, as scheduled. Passengers were allowed to remain on the train after arrival and Conductor Farnam remained on duty until 7:40 A.M., July 11. On his time sheet Conductor Farnam stated that he had received only two hours' rest on July 11, and he showed that he had received a total of ten hours' rest on the trip from Los Angeles to Chicago. In computing Conductor Farnam's pay the Carrier deducted eight hours' rest instead of ten. He was paid for 14 hours and 45 minutes of late arrival time and 2 hours and 50 minutes of station duty in Chicago. Later Conductor Farnam was notified that by error he had been overpaid since the Carrier had not deducted the two hours' rest on July 11. The amount of the alleged overpayment, $5.08, was subsequently deducted and Conductor Farnam now seeks reimbursement.

Both the Carrier and the Employes rely upon Rule 13 of the applicable Agreement. Rule 13 provides, in part:

> "Rest Periods En Route. For regular and extra service movements (except extended special tours and one-way trips of less than 12 hours in either direction from scheduled reporting time to scheduled release time), where the spread of the trip includes the hours from midnight to 6 A.M., within which hours the rest period en route shall be confined, deductions for rest when sleeping space is available may be made as follows for each trip: Maximum of 4 hours for each night in regular assignment; *** "
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> "No deduction shall apply to any release for sleep of less than two consecutive hours. When release for sleep is less than two consecutive hours, the conductor shall be paid for his full scheduled rest period. Any of the scheduled rest period not obtained shall be paid for at the hourly rate in addition to all other earnings for the month and shall be credited and paid in the payroll period in which the loss of rest occurred."

The Employes contend that no rest deduction is permissible for any particular night unless service en route that night embraces or spans the hours from Midnight to 6:00 A.M. The Carrier disagrees.

Rule 13 does not literally and specifically cover the question whether service en route must, among other things, actually span the period from Midnight to 6:00 A.M. on a particular night before a rest deduction is permissible for that particular night. But when Rule 13 is considered in its entirety, certain basic features emerge which tend strongly to refute the contention of the Employes.

These basic features or considerations are: (1) Rule 13 confines rest periods en route, even if otherwise permitted, to the hours from Midnight to 6:00 A.M.; thus, this period was probably stated in the Rule primarily for the purpose of indicating when employes may take rest en route, and not for the purpose of invoking a condition precedent to the right of the Carrier, stated elsewhere in the Rule, to make deductions for rest actually taken. (2) Only in one place in Rule 13 is there any provision to permit conductors actually to take rest en route without giving the Carrier the right to make a deduction for rest taken up to the maximum specified by the Rule. The Rule provides that "No deduction shall apply to any release for sleep of less than two consecutive hours." The specific inclusion of this one exception must, under a basic rule of contract interpretation, be accepted as an indication that the parties intended that there be no other exceptions. (3) No deduction for rest en route is permissible unless the full amount of rest covered by the deduction was actually taken. (4) Deductions for rest actually taken en route are permissible "for each night"; the Rule does not say "for each night that service en route spans the hours from Midnight to 6:00 A.M." If the parties had intended the latter it would have been very easy for them clearly so to state.

It is axiomatic that, if alternative interpretations are possible, a contract should be interpreted so as to avoid harsh and absurd results. Under the Employes' interpretation of Rule 13 a conductor could take 4 hours of rest en route and not be required to take a deduction if the trip ends as late as 5:55 A.M.; but a deduction of 4 hours would be permissible should the trip last just 5 minutes more. Thus this interpretation would lead to absurd results. In contrast, the Carrier's interpretation would lead to just and reasonable results, for under it if a conductor takes rest he takes a deduction; if he takes no rest he takes no deduction.

Thus, the conclusion is strongly suggested that Rule 13 envisions that under certain circumstances and during a certain period of the night rest may be taken en route, and that the Carrier may always make a deduction for rest actually taken en route except where the release for sleep is for less than two consecutive hours.

In support of a different conclusion, the Employes place major reliance upon various past settlements and alleged past practices on the property. Without dealing individually with every item relied upon by the Employes, it suffices to say that they have not shown any instance under Rule 13 in which it can be clearly determined from the Record that a conductor actually took at least two consecutive hours of rest while en route and in which the Carrier agreed in a compromise settlement or otherwise that there should be no deduction for rest. For instance, the case on which the Employes seem to rely most strongly, the so-called "Janes" case, involved the issue of whether time spent by a conductor in the station with passengers on the train after late arrival should be treated as late arrival time or whether it should be treated as station duty. To the extent that the "Janes" case settlement refers to past practice, the reference must be assumed to be to past practice regarding the issue involved in that case. Moreover, the 1945 Emergency Board considered an issue similar to that involved in the "Janes" case. And insofar as the 1952 "Johnson" instance is concerned, it is not clear that Johnson actually took

rest en route on the final night of the trip, and it seems quite likely that the Carrier would have made a rest deduction had it believed that Johnson had actually taken at least two consecutive hours of rest en route that night. Finally, the question and answer relied upon by the Employes lends no more support to their position than it does to that of the Carrier. Thus it seems clear that the alleged precedents and practice simply are not close enough in point to the present case to be very persuasive in favor of the Employes.

In view of all the above considerations it must be concluded that the Employes have not established a violation of the Agreement by the Carrier.

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

Claims (1), (2) and (3) all denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1953.

DISSENT TO AWARD 6315
DOCKET PC 6279

Award 6315 is based upon a wholly erroneous self-interpretation of Rule 13, ignoring the specific language of that rule which provides that rest periods are deductible only where the spread of a trip includes the hours midnight to 6:00 A.M., as contended by the employes.

The conclusion reached and the opinion in support thereof is based entirely upon speculation and presumption, as evidenced by the following statement relating to the hours midnight to 6:00 A.M.:

> "thus, this period was **probably** stated in the Rule primarily for the purpose of indicating when employes may take rest enroute and not for the purpose of invoking a condition precedent to the right of the Carrier stated elsewhere in the Rule, to make deductions for rest actually taken." (Emphasis ours).

The analysis, by the majority, of the so-called Janes case is completely in error, for the simple reason that it involved an application of Rule 13 in identical circumstances. The majority has improperly ignored the effectiveness of other previous settlements under identical circumstances wherein the

Carrier has recognized and applied the principle here contended for. These settlements date as early as March 26, 1929 in the cases of Conductor G. B. Williams, Jacksonville District, and Conductor J. C. Goodson, Atlanta District—Mediation Agreement of March 26, 1929.

The majority in its opinion attempts to brand as an absurdity under the employes contention a hypothetical situation wherein the spread of an assignment covered only the hours midnight to 5:55 A.M. Any effect of such hypothetical showing is completely negated by the fact that in the Williams case, supra, the assignment covered the hours 12:50 A.M. to 6:00 A.M., and in the Goodson case 1:30 A.M. to 6:00 A.M. Further, as late as June 29, 1953 the Carrier has recognized that deduction of a rest period under circumstances identical to the hypothetical situation and in which the conductor was released at 5:55 A.M., cannot be made for the reason—

"Rule 13 of Agreement complied with southbound.
Spread of trip does not include midnight to 6:00 A.M."

(Assignment Line 6905 New York—Miami)

Thus, Award 6315 is without support under any rule of the Agreement or under the accepted and agreed upon application of Rule 13. It revises the provisions of Rule 13 and sets aside previous agreed upon settlements made thereunder in conformity with the employes contention in Docket PC 6279. Such action is beyond the authority of the Board.

Roger Sarchet