

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE 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 R. W. Freeman, St. Louis District, that:

1. The Pullman Company violated Rules 7 and 23 of the Agreement between the Company and its Conductors in computing Conductor Freeman's wages for the month of May 1951, with special reference to the credit and pay allowed on his time sheet for the pay period ending May 31, 1951, for the deadhead trip performed between Camp Wolters and Fort Worth on May 26, and the deadhead trip performed between Fort Worth and St. Louis on May 26-27.

2. A recheck be made of Conductor Freeman's time sheet for the period ending May 31, 1951, and that he be paid in accordance with all applicable rules including specifically Rules 7 and 23.

EMPLOYES' STATEMENT OF CLAIM: I. Conductor Freeman was given an Assignment to Duty slip dated May 24, 1951, requiring him to report for duty at St. Louis at 11:10 P.M., May 26, 1951, thence to proceed to Fort Worth via Newburg, Fort Wood and Camp Wolters, carrying his time as continuous, St. Louis to Fort Worth.

In the course of carrying out this agreement, Conductor Freeman reported at Camp Wolters at 9:30 A.M. May 26.

After thus reporting, Conductor Freeman deadheaded to Fort Worth in keeping with his assignment, being released in Fort Worth at 4:30 P.M. May 26.

Conductor Freeman was then given another Assignment to Duty slip, requiring him to report for duty at Fort Worth at 4:55 P.M. May 26.

After thus reporting, Conductor Freeman deadheaded to St. Louis in keeping with this second assignment, being released at St. Louis at 11:10 A.M. May 27.

II. In submitting his time sheet for the pay period ending May 31, 1951, Conductor Freeman entered 7:00 hours for the trip Camp Wolters to

that its position in this dispute is supported by the report of Emergency Board No. 89. The claim of Conductor Freeman 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.

OPINION OF BOARD: The Carrier has stated the issue in this case as follows:

"The issue in this dispute is whether or not Management may properly combine for payment purposes two deadhead trips performed by a conductor when the period of release from duty between the two trips is less than one hour and the trips are not completed within a 24-hour period."

The Employes agree that this statement of the issue "is basically correct". This statement of the issue also suggests the facts of the case, next to be noted.

Conductor R. W. Freeman performed two deadhead trips covering a span of more than 24 hours, and the period of release between the two trips was less than one hour. More specifically, on May 26, 1951, Conductor Freeman reported at Camp Wolters at 9:30 A.M., from which point he deadheaded to Fort Worth where he was released at 4:30 P.M. Then Conductor Freeman was ordered to deadhead to St. Louis. He reported at Fort Worth at 4:55 P.M., May 26, and was released at St. Louis at 11:10 A.M., May 27. For the two deadhead trips from Camp Wolters to Fort Worth and from Fort Worth to St. Louis he was paid on a continuous time basis. The Carrier allowed him 10 hours and 30 minutes under Rule 7 for the 24-hour period from 9:30 A.M., May 26, to 9:30 A.M., May 27, and it allowed him one hour and 40 minutes for the period from 9:30 A.M. to 11:10 A.M., May 27; thus he was allowed a total of 12 hours and 10 minutes for the two trips.

The Employes contend that the two deadhead trips should not have been treated as one movement since they covered a span of more than 24 hours, but should have been treated individually from the pay standpoint. Thus, the Employes say that for the first of the two trips, from 9:30 A.M. to 4:30 P.M., May 26, Conductor Freeman should have been paid for 7 hours; that for the second trip, from 4:55 P.M., May 26, to 11:10 A.M., May 27, he should have been paid for 10 hours and 30 minutes, the maximum permitted for a 24-hour period under Rule 7; and that for the 25 minutes during which he was released between the two trips, he should have been paid for 25 minutes under Rule 14. Thus, the Employes contend that the Carrier owes Conductor Freeman an additional 5 hours and 45 minutes.

In support of their contention that the two deadhead trips should not have been treated as one movement, the Employes rely upon Rule 7 of the applicable agreement, which Rule provides:

"Deadhead Service. Conductors deadheading on passes or cars on Company business (except in connection with witness service) shall be allowed credit for actual time up to 10:30 hours for each 24-hour period from time required to report, with a minimum credit of 7 hours where overnight trips are involved.

Q-1. Shall different trips deadheading on passes or equipment within a 24-hour period be coupled together and treated as one movement?

A-1. Yes, provided both trips are completed within a 24-hour period and no other class of service has intervened."

The Carrier, on the other hand, relies heavily upon Rule 14, which provides:

“RELEASE LESS THAN ONE HOUR. When release from duty is less than one hour, no deduction shall be made from the continuity of time.”

The Carrier contends that the two trips were properly coupled as one movement for pay purposes since the period of release between them was less than one hour. The Carrier thus in effect takes the basic position that Question and Answer 1 to Rule 7 are displaced by Rule 14 where the period of release between different deadhead trips is less than one hour, and that this is so even though the two trips cover a span of more than 24 hours.

Question and Answer 1 to Rule 7 constitute a specific provision insofar as the present case is concerned, a provision dealing specifically with the coupling of different deadhead trips as one movement. This provision tells when such trips can be so coupled and it tells when they cannot. Answer 1 provides that different deadhead trips shall be coupled together as one movement “**provided both trips are completed within a 24-hour period.**” (Emphasis added). This also tells one that such trips shall not be so coupled if they are not completed within a 24-hour period. The word “provided” is defined by Webster’s New Collegiate Dictionary to mean “on condition; if”. Thus, a necessary “condition” for coupling different deadhead trips as one movement under Question and Answer 1 to Rule 7 is that both trips be completed within a 24-hour period. This **must** be so unless the phrase “provided both trips are completed within a 24-hour period” was intended by the parties to be pure surplusage. The parties will not be credited with such intent.

The Board finds no merit in the Carrier’s contention that Question and Answer 1 to Rule 7 is displaced by Rule 14 in the instant case. Rather, the former must be held to govern over the latter for, as noted above, Question and Answer 1 to Rule 7 is a specific provision insofar as the present case is concerned. In contrast, Rule 14 must be deemed a general provision insofar as its application in the present case is concerned. It is axiomatic that a specific provision must govern over a general provision. It is accordingly concluded that while Rule 14 does require pay for the 25-minute release period, it does not wipe out Question and Answer 1 to Rule 7.

The Carrier itself recognized the correct interpretation of the Rules involved herein when it issued a unilateral instruction, not binding upon the Carrier but indicating its view of the Rules at that time, to all employees concerned with the interpretation of the then newly adopted Rule 7:

“Where a conductor performs two consecutive deadhead trips and the last trip is completed more than 24 hours after the first deadhead trip started and there is no break in the continuity of time between the two deadhead trips, or if the break between the two deadhead trips is less than 1 hour, shall credit be allowed on basis of 11:15 hours [the maximum then permitted] for each 24 hours involved on the two trips or must each of the trips be considered separately?

“They shall be considered separately unless the conductor’s sign-out slip read from starting point of the first trip destination of the second trip.” [In the present case Conductor Freeman was given a new assignment, to deadhead to St. Louis, after he had been released at Fort Worth.]

To the extent that Award 6111 (involving the same parties and rules involved herein) seems to suggest a conclusion opposed to that reached herein, that Award will not be followed here. It is believed that Award 6111 relied somewhat too strongly upon Award 3754, which involved neither Question and Answer 1 to Rule 7, nor Rule 14, and also somewhat too strongly upon

a general statement, relied upon herein by the Carrier, by an Emergency Board regarding the interpretation of Rule 14. It is exceedingly difficult to believe that the Emergency Board intended or expected its general statement to have such broad application and effect as to nullify or prevent the application of a specific provision, such as Question and Answer 1 to Rule 7, to the very situation covered by and to which the provision is specifically directed. Moreover, that the proceedings of the Emergency Board do not squarely and unquestionably support the position of either party herein is evidenced by the fact both parties have quoted from and rely upon said proceedings. Indeed, some support for each party herein is contained in those proceedings.

The provisions of the parties' collective Agreement are in some instances quite complex and not just a little confusing when considered in relation to one another. In view of this fact there is special reason for applying and holding a specific provision such as Question and Answer 1 to Rule 7 to be controlling in the precise factual situation to which the provision is addressed.

In view of all the above considerations it must be concluded that the Carrier violated Rule 7 in combining the Camp Wolters to Forth Worth and the Fort Worth to St. Louis deadhead trips as one movement for payment purposes.

Accordingly, minimums and maximums provided by the Agreement should be applied separately to each of the two trips. Each of the two trips was long enough, however, to make application of the minimum guarantee under Rules 7 and 23 unnecessary. Since the Camp Wolters to Fort Worth deadhead trip consumed 7 hours, Conductor Freeman should be paid for 7 hours for that trip, which allowance violates neither the minimum nor the maximum specified by the Agreement. He should be paid for 25 minutes for the time during which he was released between the trips. Finally, he should be paid for 10 hours and 30 minutes for the Fort Worth to St. Louis trip, the maximum permitted under Rule 7. The payments just enumerated to be less payments already made for the hours in question.

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

That the Agreement was violated.

AWARD

Claims (1) and (2) sustained in accordance with Opinion.

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.

DISSENTING OPINION TO AWARD 6316, DOCKET PC-6280

The Award herein is based upon a wholly untenable interpretation of Rule 14. The author of this Award, having admitted that to him the Agreement rules "are in some instances quite complex and not just a little confusing" and having recognized the propriety of applying Rule 14 to the instant case, was in error in electing not to follow previous authoritative interpretations of the rule and past practices thereunder.

The Emergency Board referred to in the Opinion of Board herein interpreted Rule 14 as follows:

"The present rule, in identical language, has been part of the various agreements between the conductors and this carrier for almost three decades. It was originally proposed by the Organization, and it has continued from time to time to be advocated and supported by the Organization. It operates to pay a conductor for time released from duty, when less than one hour, as well as to prevent claims for separate assignments when the service of the conductor is thus briefly interrupted. In fairness to the conductor, payment should be made for so short an interval, since such freedom from duty is of no practical value to them; but by the same token, in fairness to the Company, continuity of service should not be deemed to have been broken in these circumstances, so as to provide a basis of pay for separate assignments." (Underscoring added)

The Organization's arguments for separating assignments in the instant case to provide a basis of pay for each separate segment thereof were the same as the arguments which it advanced in the case before the Emergency Board, supra, and that Board disclaimed the property of such arguments and interpreted Rule 14 as not permitting that to be done.

There is an important difference between the Organization's procedure in the case before the Emergency Board and the instant case. In the former, the Organization attempted to gain its point through rules changes. In the instant case, it attempted by interpretation of existing rules to gain what was denied to it through rules changes.

In the proceedings before the Emergency Board, the Organization had requested that Rule 14 be eliminated entirely from the Agreement. The Board denied that request and interpreted Rule 14 as having the dual purpose of coupling service and paying therefor on a continuous time basis when employees are released for less than one hour.

This Division's Award 6111 confirmed the interpretation placed upon Rule 14 by the Emergency Board, supra, the Opinion of Board therein setting forth as follows:

"It is apparent that Rule 14 operates to pay a Conductor for time released from duty when less than one hour, as well as to prevent claims for separate assignments when the service of the Conductor is thus briefly interrupted. In fairness to the Conductors, payment should be made for so short an interval since such freedom from duty is of no practical value to them, but by the same token, in fairness to the Company, continuity of service should not be deemed to have been broken in these circumstances so as to provide a basis of pay for separate assignments. See Emergency Board proceedings in the record. The Board interpreted Rule 14 as having a dual purpose of coupling service and pay therefor on a continuous time basis when Employees are released for less than one hour."

Webster's New Collegiate Dictionary, which the author of the Award in the instant case consulted in connection with another word, defines the word "continuity" which is used in the phrase "continuity of time" as contained in Rule 14, to mean "quality or state of being continuous". Accordingly, Rule 14 admittedly being applicable, it is elementary that "continuity of time" as contemplated by that rule could only be maintained in the instant case by combining the two deadhead trips as one movement for pay purposes.

In view of all the above considerations, the instant Award tortures rather than interprets the rules and can only create chaos for this Carrier.

For the above reasons we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ E. T. Horsley