Award No. 6426

Docket No. PC-6086

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, 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 Conductor T. J. Craven, Philadelphia District, that:

1. The Pullman Company violated Rule 24 of the Agreement between The Pullman Company and its Conductors in computing Conductor Craven's time for the month of November, 1950, with special reference to the trip departing Philadelphia on B&O No. 1, reporting 1:45 P. M., November 25, 1950.

2. A recheck of Conductor Craven's time be made for the month of November, 1950, and that he be credited and paid in accordance with all applicable rules including, specifically, Rule 24.

EMPLOYES' STATEMENT OF FACTS: 1. Conductor T. J. Craven, at the time of this incident, was a regularly assigned conductor to PRR Trains Nos. 35 and 36, designated as Line 6551, between Philadelphia and Pittsburgh, Pennsylvania. (Exhibit No. 1)

On November 25, 1950, Conductor Craven arrived in Philadelphia in his regular assignment and was released from duty at 9:15 A. M.

Conductor Craven had a specified layover which accrued to his regular assignment until 9:35 P.M., November 26, 1950. However, on November 25, in the course of his specified layover, the Company called Conductor Craven to report for service on B&O Train No. 1, designated as Line 2094, temporarily rerouted to depart from Philadelphia for St. Louis with return to Jersey City, a six-man operation. (Exhibit No. 2)

Conductor Craven reported at the specified time, 1:45 P. M. on November 25 and was subsequently released in St. Louis at 6:00 P. M. on November 26. Conductor Craven completed his trip in Line 2094 and then returned to his regular assignment.

2. For this trip in Line 2094, Conductor Craven was paid six days.

a conductor on his specified layover or relief days shall be paid for in addition to all other earnings for the month. The rule does not state that a conductor shall be paid twice or at the rate of double time for work performed by him on scheduled layover. Inasmuch as the Company paid Conductor Craven for the work performed by him in Line 2094 in addition to all other earnings for the month, the Company fully complied with the provisions of Rule 24.

Further, the Company's position in this dispute is supported by Questions and Answers 2 and 3 of Rule 24, which questions and answers illustrate instances of conductors working in other than their own run during their layover period. Neither of these questions and answers requires double payment or payment at the rate of double time for work performed on layover. Question and Answer 5 relied on by the Organization relates to a conductor who works in his own run while on layover. That question and answer has no application to this dispute for the reason that the work performed by Conductor Craven on layover was not work in his own run. The Organization's claim 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 part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims the Company violated Rule 24 of the current Agreement between the parties for failure to compensate claimant, by its requirement of claimant to make an extra trip, Philadelphia to St. Louis, on his assigned layover day, thereby causing claimant to lose a trip on his regular assignment, November 26th to 28th, 1950.

The parties are agreed that claimant held a regular assignment as Pullman Conductor on Line 6551, between Philadelphia and Pittsburgh, Pennsylvania. That at 9:15 A. M., November 25, 1950, claimant was released from his regular assignment, when he arrived from Pittsburgh on completion of his regular trip, and that under his regular assignment he had a specified layover until 9:35 P. M., November 26, 1950. It is further agreed by the parties that claimant was called by the Company to report for service at 1:45 P. M. on November 25th, 1950, on Baltimore and Ohio train No. 1, designated as Line 2094, to be operated Philadelphia to St. Louis. After completion of this trip on Line 2094, claimant was paid for six days' service by the Company, as was proper under the Agreement.

Claim is made for the amount of compensation claimant would have earned had he not been required to lose a trip on his regular assignment, and under Rule 24, it is contended the claim should be paid as **additional** pay. Claim is premised on the first sentence of Rule 24, as follows:

"Additional Pay When Used on Layover or Relief Days.

> "Road service performed by conductors on specified layover or relief days shall be paid for in addition to all other earnings for the month."

The Company, for its defense to the claim, contends the claimant was properly paid for the work performed in Line 2094, as provided by Rule 21, and that such payment being over and above all other earnings, he was properly paid as provided for in Rule 24.

Rule 24 is in no way ambiguous, nor are there any exceptions, as Carrier contends. From the Rule itself, it is clear the intent and purpose of the parties was to pay conductors for work performed on specified layover or relief days, in addition to all other earnings for the month. The Rule is clear and concise, and in addition to the first sentence as above quoted, the re-

mainder of the Rule provides the method for which payment shall be made where work is required to be performed, as stated in the first sentence of the Rule.

It is clear, to the Board, the claim presented herein is within the provision of Rule 24 of the Agreement, and that Carrier has violated the provisions thereof by its failure to compensate the claimant for his loss of earnings brought about by action of Carrier, in requiring claimant to lose a trip on his regular assignment on Line 6551. We agree with our holding in Award 721, and supporting awards, as concerns specifically Rule 24 of the Agreement. The claim should be sustained and claimant should be credited and paid in accordance with the Rule. Claimant is entitled to the credit and pay for three days, for the loss of a trip in his regular assignment in November 1950.

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 Carrier has violated the provision of Rule 24 of the Agreement and 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 3rd day of December, 1953.

DISSENTING OPINION TO AWARD 6426, DOCKET PC-6086

The Award of the majority herein is in error.

The undersigned concur with the conclusions of the majority in that Rule 24 "is in no way ambiguous;" in that the rule "is clear and concise," and in that, from the rule itself, "it is clear the intent and purpose of the parties was to pay conductors for work performed on specified layover or relief days, in addition to all other earnings for the month." That intent and purpose of the parties simply paraphrases by rearrangement the language of the rule itself.

But after expressing the foregoing conclusions, the majority herein proceed to make a mockery out of those conclusions by holding that the rule, supra, requires the Carrier "to compensate the claimant for his loss of earnings" or "for the loss of a trip in his regular assignment." The undersigned disagree with the conclusions of the majority in this latter respect.

Rule 24, which is quoted by the majority and upon which admittedly the claim herein is based, reads as follows:

"Additional Pay When Used on Layover or Relief Days.

"Road service performed by conductors on specified layover or relief days shall be paid for in addition to all other earnings for the month."

When the language of a rule is clear and unambiguous, there is no excuse for misinterpreting it (First Division Award 16513).

Obviously, the rule, supra, does not clearly, concisely and unambiguously, or by inference or otherwise, require the Carrier "to compensate the claimant for his loss of earnings" or "for the loss of a trip in his regular assignment." The rule, supra, does not specify how much a conductor will be paid but it simply provides that whatever is paid will be in addition to all other earnings for the month. Other rules provide bases of payment for services performed.

The Carrier contends that the claimant herein was properly paid as provided for in Rule 21, Regular Assignments—Part Time, for the work performed in Line 6551 as well as for the work performed in Line 2094 inasmuch as he performed part-time service in more than one regular assignment. As this Division held in Award 6090, "such service is clearly covered by Rule 21 which establishes the method of computing pay of 'conductors working part time on regular assignments.' "

In support of their position, the majority herein cite Award 721.

It is clear that the majority herein were familiar with neither the docket in the case covered by Award 721 nor the docket in the instant case. In neither case was any claim made for "loss of earnings" or "loss of a trip" in regular assignments.

In the case covered by Award 721 the claimant did not lose any trip in his regular assignment. He made claim for ¾ of a day additional pay for a trip which he completed within his regular layover period.

In any event, Award 721 has no bearing on the instant dispute because Rule 24 has been revised since Award 721 was rendered.

In the instant case, as stated by the Organization at the very outset of its original submission, the claim was for one-half of the 6-day assignment in Line 2094 from Philadelphia to St. Louis in addition to the 6-days' basic pay for that run, or a total of 9 days therefor, account one-half of the latter run having been completed before expiration of claimant's layover period. This coincided with the claim handled on the property when the representative of the Organization stated "We only want what is due the conductor for the service performed in Line 2094." Furthermore, in support of its position concerning its claim in this respect, the Organization contended in its rebuttal statement that, where a double is not completed within the layover period, Rule 24 provides for an additional payment "for such portion of the road service as is performed within the layover period."

The Carrier contended, and the Organization did not deny or refute it, that it was mere happenstance that the time claimed in the instant case was the same as the time claimant lost from his regular assignment, viz., three days, and that, if Line 2094 had comprised a seven-conductor run, the claim, on the basis of the Organization's contentions herein, would have been for one-half thereof, or three and one-half days instead of three days additional pay for that part of the trip completed within claimant's regular layover period.

Accordingly, the Award herein gives claimant something for which no claim was made.

For the foregoing reasons, we dissent. An Award such as this, which gives no reason or an unsound reason on which it is made is of no value as a precedent.

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ R. M. Butler

/s/ J. E. Kemp

/s/ C. P. Dugan