Award No. 6429
Docket No. PC-6266

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: The Order of Railway Conductors, Pullman System, claims for and in behalf of Conductor H. G. Hutt, Philadelphia District, that:

1. The Pullman Company violated Rule 20 of the Agreement between the Pullman Company and its Conductors in computing Conductor H. G. Hutt's wages for the months of March and April, 1951, with special reference to the transfer of 1 hour credit (earned in connection with the round trip performed March 28-31, 1951) from Conductor Hutt's time Sheet for March 31, 1951, to his Time Sheets for April 15 and 30, 1951.

2. A recheck be made of Conductor Hutt's Time Sheets for March 31, April 15, and April 30, 1951, and that he be paid in accordance with all applicable rules including, specifically, Rule 20.

EMPLOYES' STATEMENT OF FACTS: I. During the period in dispute Conductor Hutt was assigned to operate regularly on Line 6551, Philadelphia to Pittsburgh. On this assignment a round trip required three days and each six consecutive round trips were followed by a relief day.

On March 28 Conductor Hutt reported at 9:35 P.M. for one such round trip including layover. During this round trip he performed 22 "credited hours" of service. For this round trip he received three and one-sixth "credited days" covering March 29, 30, 31 and 1/6 of April 7, the relief day.

On March 31 Conductor Hutt reported at 9:35 P.M. for another such round trip including layover. During the round trip he was on duty (including 35 minutes late arrival) for 22 hours and 5 minutes. Two hours and twenty-five minutes of this service was performed prior to midnight, March 31, (i.e. during March). For this round trip he received three and one-sixth "credited days" covering April 1, 2, 3 and 1/6 of April 7, the relief day.

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Conductor Hutt submitted Time Sheets covering the pay periods ending March 15 and March 31, 1951, which reported a total number of credited hours of 229 hours and 5 minutes.

The sole factual difference between the dispute decided by the Third Division in Award 4861 and the present dispute is that in Conductor Nissen's case the conductor reported for his regular assignment before noon on the first day of the succeeding month. In the instant case Conductor Hutt reported after noon on the first day of the succeeding month. This fact, however, does not foreclose the applicability of Award No. 4861 to the instant case. Since Conductor Hutt received no credit or pay for March 31 by virtue of service performed by him on that date and his day and hour credit for the trip reporting on March 31 were considered as beginning April 1, the result is precisely the same as if Conductor Hutt had reported before noon on April 1. Thus, the Award of the Board in the Nissen case is decisive of the instant dispute and compels a denial Award.

CONCLUSION

The evidence of record supports the premises on which the Company bases its position in this dispute. Primarily, the Organization's contention finds no foundation in the rules of the working Agreement. Its contention further conflicts with the origin and intent of Rule 20, on which the Organization relies. It also conflicts with the practice which has been followed by the Company under the proration provisions of Rule 20. Finally, the Organization's claim is contrary to the decision of the Third Division in Award 4861, which decided a dispute identical in principle and similar in circumstances to the instant dispute.

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.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made in behalf of the employe on the contention that Claimant should have been paid at the overtime rate of six hours and forty minutes, for March 1951, instead of pay at the overtime rate for a period of five hours and forty minutes, as allowed by the Company; and that a violation of Rule 20 of the Agreement has been committed by the Company, in that one hour from Claimant's trip commencing March 28, 1951, and ending March 30, 1951, was carried over into April, when actually the Organization contends Carrier had no right to carry over one hour into April, since Claimant was required to make a trip commencing 9:35 P. M., March 31, and therefore only the last trip in the month can be prorated; and under Rule 20, since Claimant was required to make his last trip during March, beginning at 9:35 P. M., Carrier had no right to prorate the hours of the round trip beginning March 28 and ending March 30, as the last round trip or layover trip.

The Organization contends Rule 20 makes it mandatory on the Company to prorate the time for the last trip in the month, which trip in this case extends into April, the succeeding month, and makes no provision for the carrying over of any time due from the trip beginning March 28 and ending March 30, 1951.

Carrier denies the contention made by Claimant and relies on the strict interpretation of Rule 20 of the Agreement, and takes the position that the trip made by Claimant beginning March 31 at 9:35 P. M., and completed 8:30 A. M. April 2, can in no way be considered as the last round trip or layover trip in the month of March, for the reason the last trip was not begun until 9:35 P. M., and therefore could not properly be considered, under the Rule, since the trip itself was not begun and reporting time was not before Noon, as provided in paragraph 2 of the Rule.

Carrier contends that it properly carried time of Claimant of one-sixth day and one hour due Claimant on his trip beginning March 28, from March into April, and no time was due Claimant for his last trip commencing 9:35

P. M., March 31, in March, since this time was properly not due until April, since the actual reporting time and commencing of the trip did not take place before Noon; therefore, such time for work performed 9:35 P. M., March 31 to Midnight would be credited to April 1, as provided in Paragraph 2 of Rule 20.

The Board is of the opinion that Carrier has properly compensated the Claimant under Rule 20 of the Agreement, and the claim does not merit a sustaining Award.

The record clearly shows Carrier has properly credited Claimant for the service hours allowed on his trip beinning March 28. It has also shown that credit for two hours and twenty-five minutes time were credited to April 1, since the work performed on March 31 was not begun before Noon of the last day of the month. We thorouhgly agree with our Award 4861 and specifically to our comment concerning hearing before the Emergency Board as to the application of Rule 20.

The Rule is not ambiguous and it is clear the Carrier has in no way violated the Agreement, as alleged. The Claim should be denied.

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

That both parties to this dispute waived oral hearing thereon;

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 did not violate the Agreement. Claim is not sufficient to merit a sustaining Award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummons
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1953.