Award No. 6493

Docket No. PC-6376

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, 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. O. Freet, Kansas City District, that:

1. The Pullman Company violated Rules 12, 13, 22 and 23 of the Agreement between the Company and its Conductors on Jan. 12, 1952, by assigning Conductor Freet to Mo. Pac.-U. P. trains 9-70, Kansas City to Junction City and return, on a "Time Continuous" basis.

2. A recheck be made of Conductor Freet's Time Sheets for the periods ending Jan. 15 and 31, 1952, and that he be credited and paid in accordance with all applicable rules including specifically Rules 12, 13, 22 and 23.

EMPLOYES' STATEMENT OF FACTS: I. Conductor Freet received the following Assignment to Duty slip:

"ASSIGNMENT TO DUTY conductor January 11, 1952

Conductor H. O. Freet, Kansas City District, Report at Union Station at 7:05 A. M. time zone 2, depart 9:15 A. M., date 1-12, 1952, to perform the following service: Meet Mo Pac No. 9 and take charge of cars enroute Ft. Riley, Kansas, and handle thru to Junction City, Kansas. Then return DH KC UP train No. 70, 4:00 P. M., 1-12, Time continuous. The destination of this trip is Kansas City.

/s/ H. E. Worley,
Superintendent."

Conductor Freet performed this assignment.

Conductor Freet was credited and paid 12:40 hours for this assignment.

II.

Pertinent portions of applicable rules are quoted at various points in the statement of "Position of Employes" below.

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 and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF THE BOARD: In our Awards Nos. 4659 and 6110 we held that Rule 13 required a uniform reporting and release time and that the Carrier could not use a continuous time assignment to circumvent that requirement. It is here contended that such awards are erroneous but we note that a Mediation Agreement between these parties, dated June 26, 1953, provided in part as follows:

> "3. The Company has and does hereby recognize the principle established by Award No. 4659 of the National Railroad Adjustment Board, Third Division.
>
> "4. The Company hereby recognizes the principle established by Award No. 6110 of the National Railroad Adjustment Board, Third Division."

Since the parties have agreed to recognize and apply the principle established by those awards, it would be improper to overrule them.

It is also contended that Awards Nos. 3754 and 6111 should govern decision here but no issue was presented in those cases involving the provisions of Rule 13 requiring a uniform reporting and release time. That issue is presented here and we think the principle established by Awards Nos. 4659 and 6110 governs our decision.

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 respectfully Carrier and Employe 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of February, 1954.

DISSENTING OPINION TO AWARD 6493, DOCKET PC-6376

This Award is in error because it does not interpret the Agreement rules which were in effect on the dates covered by the instant claim, but, on the contrary, interprets a Mediation Agreement made approximately a year

and one-half later under pressure of a strike threat and involving a different factual situation from that involved in the instant case. The Mediation Agreement, supra, was not even in effect at the time the docket in the instant case was closed and was introduced into the case for the first time by the Labor Member representing the Organization on the Board in his argument of the case before the Referee.

The record shows that the Carrier distinguished between the factual situation covered by Awards 4659 and 6110 and the factual situation covered by Awards 3754 and 6111.

The record shows that the Carrier Member on the Board argued to the Referee that the Mediation Agreement, supra, could have no bearing on the claim in the instant case in any event because it was not made until June 26, 1953, whereas the date covered by the claim was January 12, 1952; that the issue involved in Awards 4659 and 6110 was the combining of two service trips on a continuous time basis as distinguished from the issue involved in Awards 3754 and 6111 of combining a service trip with a deadhead trip on a continuous time basis; that the Carrier did not agree to waive the principles established by Awards 3754 and 6111, and, consequently, it had preserved its right to combine a service trip with a deadhead trip on a continuous time basis as permitted by Rule 23, Question and Answer 1 thereunder, and as confirmed by Awards 3754 and 6111, and that there was no basis for tying in these latter Awards with the Mediation Agreement, supra.

The record also showed that the question of interpretation of the Mediation Agreement was pending before the National Mediation Board, that Board's services having been invoked by the Organization "to resolve the question in issue." The Mediation Board has not yet given its interpretation as required by the Railway Labor Act, as amended, Sec. 5, Second of which Act provides:

> "In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days."

By interpreting the Mediation Agreement, this Division has usurped the function vested in the National Mediation Board by this provision of the Railway Labor Act.

This Award also is in error in ruling out Awards 3754 and 6111 on the erroneous basis that no issue was presented in those cases involving the provisions of Rule 13. Even if that were true, which is denied, the obvious reason therefor, notwithstanding the same factual situation was involved as in the instant case, would have been that the Organization did not consider the provisions of Rule 13 applied. The omission thereof from its arguments in those cases would have supported the Carrier's position herein that application of Rule 13 is limied by its title to deductions for rest periods enroute.

However, the fact is that the issue involving Rule 13 was presented by the Organization in both cases covered by Awards 3754 and 6111.

The record in the case covered by Award 3754 shows that the Organization contended as follows:

> "The Operation of Conductors form is issued and posted in compliance with Rule 15, * * * and that portion of Rule 13 reading, 'A uniform reporting and release time shall be established for each station in each district and agency', and Rule 59 which states that they 'shall be posted.'"

The whole issue in that case was whether or not the Carrier was required to release Claimant therein in conformity with the established release time following the initial and prior to the return deadhead trips and pay him separately for such deadhead trips. This same issue was partly involved in the case covered by Award 6029 which will be referred to hereinafter.

The record in the case covered by Award 6111 shows that the Organization contended as follows:

> "Rule 13 requires without exception that 'a uniform reporting and release time shall be established for each station in each district and agency.'
>
> "There would be no point in establishing uniform reporting times unless these were observed in assignments.
>
> "The uniform reporting time requirement under Rule 13 was not observed by the Company in connection with Conductor Thomas' assignment relative to reporting at Altoona.
>
> * * *
>
> "Your petitioner's only purpose at this point is to record its objection to the practice of the Company of assigning improper reporting and release times.
>
> "Specifically the claim of the Company that it has the right to 'couple by assigning on a continuous time basis' in violation of Rule 13 cannot be permitted to pass unchallenged."

The Opinion of Board in Award 6111 contains as follows, such contentions with respect to Rule 13 to the contrary notwithstanding:

> "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."

It is noteworthy that, in Award 6029, with the same Referee as in the instant case and involving the same parties and rules, this Division denied claims which were based, in major part, on the Organization's allegation that Rule 13 was violated because the reporting and release times established thereunder were not complied with. In the instant case, the Carrier denied, and there was no proof to the contrary, that any reporting or release time ever had been established at Junction City, but, even if there had been, the claim herein should have been denied based on consistency with Award 6029.

For the above reasons, we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ J. E. Kemp

/s/ E. T. Horsley

/s/ C. P. Dugan