

Award No. 6566

Docket No. PC-6430

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, 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 E. Wachovec, Cleveland District, that:

1. Rule 23 of the Agreement between the Pullman Company and its Conductors (effective Jan. 1, 1951) was violated by the Company in connection with a trip performed by Conductor Wachovec on Dec. 24, 1951, deadheading on pass, reporting at Buffalo at 8:25 A. M. and released at Cleveland at 11:50 A. M., for which trip Conductor Wachovec was credited and paid 3:25 hours.

2. A recheck be made of Conductor Wachovec's Time Sheet for the period ending Dec. 31, 1951, and that he be paid in accordance with all applicable rules including specifically Rule 23.

EMPLOYES' STATEMENT OF FACTS:

I

On Dec. 23, 1951, Conductor Wachovec, a Cleveland District Conductor whose work had brought him to New York, received an assignment from the New York District office.

This assignment directed Conductor Wachovec to report at New York for road service in the **regular** conductor operation designated as Line 5235 on New York Central Train 59, New York to Buffalo.

Conductor Wachovec's Time Sheet shows that he reported for this duty at 10:10 P. M., Dec. 23.

Conductor Wachovec performed this assigned trip in **regular road service** and was released at Buffalo at 8:20 A. M., Dec. 24.

II

Conductor Wachovec thereupon received a **second** Assignment to Duty slip issued by the Buffalo District office.

This assignment directed him to deadhead on pass, Buffalo to Cleveland.

In view of the **OPINION OF BOARD** quoted above from Award 3754 that "... regular road service may be combined with deadhead service and treated as one movement where the conductor is not released but is paid for continuous time ..." it was obviously proper to combine Conductor Wachovec's regular service in Line 5235 with his deadhead service from Cleveland to Buffalo and treat both trips as one continuous movement.

The only difference between the instant dispute and the dispute decided by Award 3754 is that in the instant dispute the service trip and the deadhead service trip were coupled in accordance with Rule 14 of the Agreement, whereas in the dispute decided by Award 3754 the conductor was instructed to carry his time for the deadhead service trip as continuous with his time for the regular service trip. This difference, however, is not significant inasmuch as the manner by which the deadhead and regular service is combined does not affect the credit and pay to which the conductor is entitled.

CONCLUSION

In this submission The Pullman Company has shown that Conductor Wachovec was properly paid in accordance with the applicable rules of the working Agreement for the assignment given him at Buffalo on December 24, 1951. Further, it has been demonstrated that Rules 13, 23, 38, and 58 were not violated and that Third Division Award 3754 recognized that Management properly may combine deadhead and regular service.

The Organization's claim in behalf of Conductor Wachovec is without merit and should be denied.

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

OPINION OF BOARD: Claimant performed extra road service (10 hours 10 minutes) followed by a release period of less than one hour (5 minutes) followed by a deadhead on pass less than 7 hours (3 hours 25 minutes).

The two trips were the subject of two distinct and separate assignments, one given in New York and the other in Buffalo; and Claimant was given no instructions to carry his time as continuous from time of release at Buffalo.

The Carrier combined the two assignments, credited the elapsed 13 hours and 40 minutes, made no deduction for the release period and paid as for a single movement.

The position of the Organization is that Rule 23 Q and A-1 does not authorize such a combination of the two services and therefore requires payment of a minimum of 7 hours for the deadhead service.

The position of the Carrier is that, notwithstanding Rule 23, a combination of trips such as this may be credited and paid for on a continuous time basis pursuant to Rule 14 when the release from duty between trips is less than one hour.

First. If we are to pay any attention to the headings in this Agreement, Rule 23 is a pay rule because it appears under the heading "BASIS OF PAYMENT," whereas Rules 6, 7, 13 and 14 are time-keeping or bookkeeping rules because they appear under the headings "CREDITS FOR HOURS WORKED" and "DEDUCTIONS."

Second. These conclusions deduced from the headings are fortified by the text of the Rules. Thus, all of the Rules comprised under the Credit and Deduction headings speak consistently of time to be credited or deducted and never of payment, whereas all of the Rules comprised under the Basis-of-Payment heading speak of time to be paid. And Rule 12 explicitly provides that all hours credited shall be paid for in accordance with the rules covering "Basis of Payment."

It is clear, therefore, that any obligation to pay for the service performed here is fixed by the applicable provisions of Rule 22 and Rule 23, and not by Rule 6 or Rule 7 or Rule 14. Rule 14 has no operative effect except to forbid a deduction from the continuity of time credited. It is Rule 22 that requires the payment "for all hours credited each month."

Third. While both Rule 7 and Rule 23 are focused on actual time for deadhead service, Rule 7 sets a maximum whereas Rule 23 does not; and each Rule sets a minimum. We find at most deficiencies of syntax but no conflict among these provisions. Rule 7 sets an hourly maximum credit and an overnight minimum credit both of which are translated into the payment obligation provided by Section 22. Rule 23 on the other hand is self-executing because it fixes an hourly minimum and provides that the minimum shall be both "credited and paid."

Nor do we find any conflict between Rule 23 and Rule 14, or between Rule 23 and Rule 14 as translated into a payment obligation by Rule 22. When a conductor is released from duty less than one hour, two entirely consistent, if not equitable, consequences ensue: payment for the release period and loss of the right to combine the two services into a single movement.

The Carrier's argument comes down to the proposition that Claimant was not "released" because he was paid during the release period and that Rule 14 therefore effected a constructive combination of the two classes of service.

The difficulty with this argument is that Rule 23 bases the right to combine services, not upon continuity of payment, but upon continuity of service; and Claimant was in fact "released between the different classes of service."

The conclusion is that, by reason of the intervening release, the extra road service and the deadhead must be treated as separate trips and the minimum guarantee provided by Rule 23 is therefore applicable.

(Exhibits not reproduced. Page references relate to original document.)

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 respectfully 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 Rule 23 of 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 26th day of April, 1954.

DISSENT TO AWARD 6566, DOCKET PC-6430

This Award is the result of a misunderstanding on the part of the Referee of the Carrier's position, a misunderstanding of the rules, a disregard for

proposals of the Organization for amendment of the Agreement, a disregard for his own philosophy in connection with such proposals, a disregard for the interpretations placed on the rules by the Emergency Board which handled the Organization's proposal for rules changes, and a disregard for Awards of this Division confirming and reiterating the Emergency Board's interpretations, supra.

The Opinion of Board herein implies that the Carrier's position straddles the issue of whether or not Claimant was released by holding that its position is that Claimant was released and that Claimant was not released from duty between trips. In this respect, the Opinion sets forth as follows:

"The position of the Carrier is that, notwithstanding Rule 23, a combination of trips such as this may be credited and paid for on a continuous time basis pursuant to Rule 14 when the release from duty between trips is less than one hour.

* * *

"The Carrier's argument comes down to the proposition that Claimant was not 'released' because he was paid during the release period and that Rule 14 therefore effected a constructive combination of the two classes of service."

The record throughout shows the Carrier's position to be that Claimant was released five minutes between trips at Buffalo and it contains Carrier's exhibits in support thereof.

Rule 14 provides:

"When release from duty is less than one hour, no deduction shall be made from the continuity of time."

Webster's New Collegiate Dictionary defines the word "continuity" to mean "quality or state of being continuous."

Accordingly, it is elementary that the phrase "continuity of time" as used in Rule 14 can only mean, as the Carrier herein showed, that a "conductor's time shall be carried as continuous" without deduction, computed from the reporting time of the initial trip until released from duty on the final trip, and that the Carrier is prevented from separating assignments for pay purposes when the service of the conductor is thus briefly interrupted.

Applied to the instant case, inasmuch as Claimant's release from duty at Buffalo was less than one hour (5 minutes), Rule 14 obligated the Carrier to maintain the continuity of his time by computing the deadhead trip continuous with the service trip.

The Carrier showed that the Organization previously had requested revisions in Rules 7 and 23 to eliminate the coupling of deadhead trips with either extra road service or regular line service and to provide for such service being treated as single movements for which conductors performing less than 7 hours' service from the time they are required to report for duty until they are released from duty would be credited and paid actual time, but not less than 7 hours, a minimum day, for each one-way trip or assignment in such service.

The Carrier showed that concurrently with the foregoing revisions it had requested, the Organization also had requested that Rule 14 be eliminated entirely from the Agreement.

The foregoing proposals for amendment of the Agreement have an important bearing in and of themselves on interpreting the meaning of rules. In Award 5211, the same Referee as in the instant case, characterized such proposals as follows:

"Proposals for amendment of an agreement may throw light on what was meant by how it was sought to be amended. Sometimes a proposed amendment can be fairly taken as an admission by a party that its objective can be obtained only by a change in the meaning of the agreement; but just as often, perhaps, the proposal of an amendment is founded upon situations not contemplated when the agreement was adopted, or upon a conviction that, although the agreement is favorable, clarification is all that is needed.

"We have before us the current proposal, the arbitration award and the 1950 Emergency Board Report. From them we are unable to draw any conclusions, one way or the other, from the various efforts to secure amendments of the Rule. This leaves us where these various boards left the parties: with Rule 52 (a) as it is now written."

While the Carrier, Agreement and Rules involved in the case covered by Award 5211 are different from those involved in the instant case, the general principle quoted above is particularly relevant hereto because the Organization's proposed rules changes in the instant case also were handled by an Emergency Board and the latter Board, in rejecting the proposals covering Rules 7, 14 and 23, left no room for doubt concerning the purpose which motivated the Organization's efforts to secure amendments to those rules in the instant case. It characterized the Organization's request for the elimination of Rule 14 as follows:

"This proposal of the Organization is but another device whereby its proposed minimum-payment rule (calling for the payment of a minimum of 7 hours for each one-way trip or assignment, without combination of deadhead and road service), which has already been rejected, would become operative under release from duty for less than one hour.

Like all of the Organization's proposals in connection with the minimum-payment rules, it is merely designed to increase conductor compensation. Its effect would be tantamount to a substantial wage increase, and it would add to the number of hours credited and not worked. The imposition of such additional financial burdens, unsupported by any showing of need or equity, would tend to handicap the Company in its competition with other transport agencies, to the ultimate detriment of the conductors as well as of the Pullman service. In the judgment of the Board the proposal is without merit."

The Emergency Board 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 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."

Awards 3754 and 6111, involving the same parties as the instant case, confirmed this Carrier's right to continue the previously existing practice of combining deadhead and service trips as one movement for pay purposes under Rules 7, 14, 22 and 23. The Opinion of Board in Award 6111 held 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."

For the above reasons, the instant Award is in error and we dissent thereto.

/s/ W. H. Castle
/s/ R. M. Butler
/s/ E. T. Horsley
/s/ J. E. Kemp
/s/ C. P. Dugan