

Award No. 7362
Docket No. PC-7490

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,
PULLMAN SYSTEM**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductors C. J. Zimmerman, R. V. Rohret, J. O. Craney and E. E. Peyton, Omaha District, that:

1. Rule 13 of the Agreement between the Company and its Conductors was violated by the Company when the Company improperly deducted four hours credit and pay earned as follows:

Conductor Zimmerman, trip of May 8, 1953
Conductor Rohret, trip of May 13, 1953
Conductor Craney, trip of May 20, 1953
Conductor Peyton, trip of May 31, 1953

2. The Time Sheets covering the above listed trips be re-computed and these Conductors credited and paid under applicable rules for an additional four hours each.

EMPLOYES' STATEMENT OF FACTS:

I.

The pertinent portion of Rule 13 reads as follows:

"Rest Periods En Route. For regular and extra service movements (except extended special tours and one-way trips of less than 12 hours in either direction from scheduled reporting time to scheduled release time), where the spread of the trip includes the hours from midnight to 6 A. M., within which hours the rest period en route shall be confined, deductions for rest when sleeping space is available may be made as follows for each trip:

Maximum of 4 hours for each night in regular assignment;

Maximum of 4 hours for the first night and a maximum of 6 hours for each night thereafter in extra service."

the provisions of that rule, not on the basis of whether a different kind of assignment would have limited the application of that rule. In fact, what the Organization is contending for in this dispute is to require the Company to change its practice of assigning conductors in service out of Omaha in the event a deduction for rest is involved, a condition which in the instant case would require the Company to assign the extra car or cars picked up at Omaha to the regular Kansas City District Conductor to protect Omaha-Lincoln and subsequently to transfer those cars to the extra conductor upon arrival in Lincoln. Such an assignment would permit the Omaha extra conductor to ride deadhead, Omaha-Lincoln, and require the regular Kansas City Conductor to take over the additional work arising at Omaha. The Company submits that the assignment to service, Omaha-Denver, given the conductors involved in this dispute was made in accordance with the rules of the Agreement and that such assignment was both practicable and just.

CONCLUSION

In this ex parte the Company has shown that Management properly assigned Conductors Zimmerman, et al. to service, Omaha-Denver, in accordance with the provisions of Rule 10(c). Also, the Company has shown that Management in each instance properly made a 4-hour rest deduction as provided in Rule 13 of the Agreement. The Organization's contention that the Company was required to assign Conductors Zimmerman, et al. in a manner which would permit the Omaha extra conductors to ride deadhead, Omaha-Lincoln, and which would require the regular Kansas City Conductor to take charge of the car or cars between Omaha-Lincoln is an improper attempt to add non-constructive time involving additional credit and pay to assignments made in full accordance with the rules of the Agreement.

The claim is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The elementary facts of this case are not in dispute. Train No. 19 out of Omaha normally carries three Pullman sleeping cars between Omaha and Lincoln, Nebraska. At Lincoln two of these cars join Train No. 43 for Great Falls and Billings, Montana. The Pullman Conductor who is in charge of the three cars from Omaha to Lincoln, continues with the two cars destined for Billings and the third car continues from Lincoln to Denver, in Line 104, with a porter in charge. When more than one Pullman sleeping car is on Train No. 19, destined for Denver, the services of a Pullman Conductor are required for the Denver run (Rule 64).

On the dates mentioned in this claim, the services of a Pullman Conductor were required between Lincoln and Denver, there being more than one Pullman car continuing to Denver. The Carrier assigned two Pullman Conductors at Omaha, one with two cars for the Billings run and one for the Denver run. The latter run, from reporting time at Omaha (9:15 P. M.) to time of release in Denver (8:25 A. M., Mountain Time), was a span of 12 hours and 10 minutes. The Carrier contends that these assignments were made in accordance with Rule 10(c), which provides that,

"(c) A conductor, within the spread of his assignment, may be required to lift transportation for cars other than those he will handle on the road without additional credit or pay, but his responsibility therefor shall cease when released from receiving service. When conductors are available, they shall receive for the cars they will handle on the road."

The Employes claim that there has been a violation of Rule 13, in that past practice has been to deadhead the added conductors from Omaha to

Lincoln. In this way, the run from Lincoln to Denver was less than twelve hours in length and no rest period was allowed en route and no deduction was made for rest periods as has been done on the dates here in question.

We think it is clearly the prerogative of the Carrier to determine the number of conductors required on any particular run. Except as it has restricted itself by the Collective Bargaining Agreement, or has been limited by statute, the assignment of work necessary to its operations lies within the Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Agreement, in the interest of efficiency and economy (Award 5331).

The issue before us is whether or not the Carrier violated Rule 13 in assigning Claimants to start their road service at Omaha instead of Lincoln, Nebraska.

Rule 13 does not specify the manner in which, or the points between which, conductors will be used in service. On the contrary, as we have previously ruled, Rule 13 simply "envisions that under certain circumstances and during a certain period of the night rest may be taken en route, and the Carrier may always make a deduction for rest actually taken en route except where the release for sleep is for less than two consecutive hours." (Award 6315).

On the question of past practice, the Employees have cited a few instances where the deadheading to Lincoln was done, and cite a specific claim allowed by the Carrier on the property for one, Conductor Summerson. We are not acquainted with all of the facts in the Summerson case. Whether the circumstances there involved are in keeping with those now before us, we do not know. Be that as it may, we cannot consider the allowance of one isolated claim by the Carrier as a precedent and practice which should be controlling here (Award 6341). The Agreement nowhere specifies that the Carrier may not change assignments or institute new ones as its operations require (Award 7172).

The burden of establishing facts sufficient to require the allowance of a claim (and proper language in the agreement covering the situations), is upon those who seek the allowances. We do not find that Claimants have established proof of a violation of Rule 13 in the instant case.

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

That the parties waived hearing on this dispute; and

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 28th day of June, 1956.