

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor R. E. Michau, Parlor Car Conductor employed by the Milwaukee Road, that

1. Rules 24, 52, 28, 32, 50 and 53(a) of the Agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and its Parlor Car Conductors were violated by the Company on May 19 and again on May 24, 1955, when the Company operated Train No. 15, covered by a bulletin schedule, without the services of a Parlor Car Conductor.

2. Conductor Michau be credited and paid for the hours involved and not less than 1¼ days for each of trips (May 19 and May 24) Chicago to Minneapolis, and further credited and paid not less than 6:50 hours for each of the deadhead trips (May 19 and May 24) Minneapolis to Chicago.

EMPLOYES' STATEMENT OF FACTS:

I.

On May 19 and May 24, 1955, an Operation of Conductors form was in effect which in part directed that conductor service be performed on Train No. 15, Chicago to Minneapolis.

On May 19 and May 24, 1955, Train No. 15 was operated Chicago to Minneapolis without the services of a Conductor.

II.

On May 24, 1955, Conductor Michau filed claim for the violation of the Rules which occurred on May 19; and on May 31, 1955, Conductor Michau filed claim for the violation of the Rules which occurred on May 24, 1955.

These two claims were subsequently consolidated and a hearing was accorded the Conductor on this consolidated claim on June 23, 1955.

time deadheading. He, therefore, has no proper claim for deadhead service as he performed none.

During the handling of this claim on the property the Carrier's representative made reference to the Memorandum of Agreement dated April 5, 1955 (Carrier's Exhibit "B") in an effort to show that the parties, when signing that agreement, had in mind that the regularly assigned parlor car conductor designated would be paid only for "such trip" which did not intend that he be paid for some deadhead service which he did not perform. The General Chairman argued, however, that the Memorandum of Agreement (Carrier's Exhibit "B") referred to was not applicable but rather, Paragraph (a) of Rule 53. This clearly indicated that the General Chairman conceded that the claim for deadhead service was not proper under the provisions of the Memorandum of Agreement and we submit it is no more proper under the provisions of Rule 53 (a).

There is no support in Paragraph (a) of Schedule Rule 53 for payment for deadhead service not performed. There was no deadhead service included within the assignment which the claimant allegedly lost. Rule 53 (a) clearly shows that the conductor shall be paid "for the assignment he lost". Only the trips on No. 15 from Chicago to Minneapolis May 19 and on May 24 were included in the assignment. Conductor Michau has been paid for the assignment he lost as contemplated by the provisions of Rule 53 (a) or in other words, he has been paid for "such trip" in accordance with the provisions of the Memorandum of Agreement referred to. He is due no further payment and certainly he is not due payment for deadhead service which was not included in the assignment and which he did not perform.

The claim is not supported by the schedule rules or understandings as between the parties to this dispute and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was one of five parlor car conductors regularly assigned to a bulletined operation involving four trains running between Chicago and Minneapolis. The conductor regularly assigned to Train 15, which handled only one parlor car on the claim dates in question, reported sick. There being no other available conductors the four regularly assigned conductors were used to protect all the runs for the period May 19 thru May 25 with the exception of Train 15 on May 19 and May 24.

On four occasions during this period conductors other than claimant were paid for deadheading service actually deadheaded so that they would be available to handle their scheduled assignments. Claim was filed for road service Chicago to Minneapolis for May 19 and May 24 and also for deadhead trips on the same dates Minneapolis to Chicago. Neither road service nor deadhead service was actually performed. After initial denial of claim by the Superintendent an appeal was made by the General Chairman to the Carrier's Assistant to the Vice President who settled the portion of the claim relating to the road service trip but denied the portion concerning deadhead service. We are concerned here solely with the portion of the claim relating to deadhead service.

Employees maintain that a rules violation occurred when on May 19 and 24 the Carrier operated Train 15 covered by a bulletined schedule without the services of a Parlor Car Conductor thereby depriving claimant of an assignment to which he was entitled. That this lost assignment should cover a round trip comprising road service and deadhead service and cite Award 7067 as authority. That Rule 53(a) set forth below is controlling. That in one previous instance Carrier has recognized the validity of the claim under identical conditions:

"RULE 53. COMPENSATION FOR LOST ASSIGNMENT

(a) If a sleeping and parlor car conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the agreement, and that claim is sustained, he shall be paid for the assignment he lost (at straight time rate) in addition to all other earnings for the month."

Carrier contends that according to Rule 52, below, a Parlor Car Conductor was not required on Train 15 because only one parlor car was handled and on the days this assignment was blanked it merely exercised the option provided for in Rule 52 (a) and (b)

"RULE 52. CONDUCTOR AND OPTIONAL OPERATIONS

(a) Milwaukee sleeping or parlor car conductors shall be operated on all trains while carrying, at the same time, more than one Milwaukee sleeping or parlor car, in service, except as provided in paragraph (c) of this rule.

(b) The Management shall have the option of operating sleeping or parlor car conductors, porters in charge or attendants in charge, interchangeably, from time to time, on all trains carrying one Milwaukee car, either sleeping or parlor, in service."

Carrier also contends that if petitioner bases its argument for payment on the fact that Train 15 was in a bulletined assignment and therefore Rule 52 would have no application, the only assignment that could have been lost was road service to Minneapolis and for that claimant was compensated.

It is also maintained by the Carrier that application of Rule 7 Deadhead Service precludes payment of this claim because no actual deadheading was performed.

"RULE 7. DEADHEAD SERVICE

"Conductors deadheading on passes, or on cars on company business (except in connection with witness service) shall be allowed credit for actual time up to 10:30 hours for each 24-hour period from the time required to report until released, with a minimum credit of 7 hours. Deadheading resulting from the exercise of seniority will not be paid for."

It is not disputed that claimant was paid for the road service portion of the trip because Train 15, although carrying only one parlor car, was included in a regular bulletined assignment. We do not read the option provision of Rule 52 as Carrier would have us do. By its action of making payment Carrier admits it could not blank the two assignments in question.

We now come to the question of what was the assignment claimant lost. We find that the Carrier has answered for us by its actions in staggering the four conductors in protecting the runs previously covered by five conductors and in its payments for such added service. In order to have conductors available to handle regular assignments it was necessary in four instances to deadhead men to opposite terminals. This deadheading was paid for. That was the Carrier's interpretation of the assignments when confronted with a situation which required four employees to absorb the work of five. The same treatment should be afforded claimant. Had he been used on the claim dates, as he should have been, under Carrier's practice in this situation, he would have been deadheaded back to Chicago to protect his regular assignment.

The Deadhead Rule provides for "actual time up to 10:30 hours . . . with a minimum credit of 7 hours." It is the minimum credit sought in this claim pursuant to the Rule.

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 the Carrier violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 19th day of December, 1956.