Award No. 7665
Docket No. PC-8082

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor A. J. Corbett, Milwaukee District, that:

1. Rule 53 (a) of the Agreement between the Milwaukee Road and its Parlor Car Conductors was violated by the Company on September 1, 1955, when the Company, in proffering settlement for an assignment improperly withheld from Conductor Corbett on June 9, 1955, refused to pay the full amount due Conductor Corbett under the rules of the Agreement. Rule 8 (a) is also involved.

2. Conductor Corbett be credited and paid 13:40 hours held-for-service time under applicable rules of the Agreement in addition to those sums already paid to him in connection with the assignment improperly withheld from him on June 9, 1955.

EMPLOYES' STATEMENT OF FACTS:

I.

On June 9, 1955, the following assignment existed which the Milwaukee Road under the existing Agreement was required to fill.

a. Road service on Train 15, Chicago to Minneapolis, June 9.

b. Road service on Train 100, Minneapolis to Chicago, June 10.

The Conductor scheduled to perform this assignment failed to report for duty.

Under the existing Agreement the Milwaukee Road was required to fill this assignment (1st) with an extra Conductor if available, and (2nd) in the absence of extra Conductors with a regular Conductor if available.

No extra Conductor was available to fill the above described assignment.

The tabulation shown in the Carrier's Statement of Facts indicates that Conductor Corbett was scheduled to perform service as follows:

Date	Train No.
June 6	6
7	15
8	100
9	Rest
10	101
11	6
12	15

and he actually performed service strictly in accordance with that schedule. He was not held for service.

Rule 8 provides for payment of held for service time to a regularly assigned conductor **only** in a case where such conductor is "held at home terminal by direction of the management beyond the expiration of layover". Conductor Corbett was not so held and there can be no basis for the claim for held for service time. Conductor Corbett has been fully paid for the "assignment he lost". That assignment did not include any held for service time nor was he actually held for service. We therefore respectfully request that the claim be denied.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant here, Conductor A. J. Corbett, makes claim for difference in the amount paid and the amount allegedly due him had he been given assignment due him under the rules, and properly compensated for such service.

The parties are in complete agreement on material facts. The regularly assigned conductor was not available on the dates in question, namely June 9 and 10, 1955 on trains 15 and 100 operating between Chicago-Minneapolis and Minneapolis-Chicago. Neither was another Conductor to whom the assignment was offered, and Claimant, being in Chicago was available to perform the extra road service occasioned by the vacancy. Claimant was paid that portion of his claim covering the actual road service but was not paid an amount allegedly due for Held For Service time under Rule 8(a).

The Organization asserts that had the Claimant been awarded the assignment to which he was entitled he would not only have been entitled to compensation for actual road service but for that time he was held over at his home terminal (Chicago) until reporting for his next assignment within the meaning of Rule 53(a) and 8(a); since said rules contemplate full and not partial compensation for all work to which an employe is entitled.

The Carrier takes the position that Claimant here was properly compensated for actual road service; that the requirement that a Conductor be on trains having only one parlor car is optional at the discretion of the Carrier, thus negating the right of Claimant to service on Train 15, which on the date in question was in effect blanked. It was further pointed out that there was no held-for-service time in the bulletined assignments pertaining to trains 15 and 100 and finally that the Memorandum of Agreement bearing date of April 5, 1955 specifically provides for the payment for Extra Road Service at the straight-time rate only.

Rules 8(a), 52(a) (b), 53(a) and the Memorandum of Agreement of April 5, 1955,

RULE 8. **HELD FOR SERVICE.**

(a) A regularly assigned conductor held at home terminal by direction of the management beyond expiration of layover shall be allowed hourage credit and pay up to 7 hours for each succeeding 24-hour period. An extra conductor held at home terminal by direction of the management shall be allowed the same hourage credit and pay."

"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."

"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."

"**MEMORANDUM OF AGREEMENT.**

It is hereby understood and agreed between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and its parlor car conductors, represented by the Order of Railway Conductors and Brakemen of America that if parlor cars are operated without a conductor in violation of the Agreement, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company will not assert an inability to place a conductor on the cars because of nonavailability.

When an extra parlor car conductor is not available, payment (at the straight-time rate) for such trip shall be made in addition to all other earnings for the month to the regularly-assigned parlor car conductor designated by the local chairman.

Signed at Chicago, Illinois, this 5th day of April, 1955.

sgd/ A. G. Wise
General Chairman-ORC&B representing sleeping and parlor car conductors employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

sgd/ C. P. Downing
Assistant to Vice President For the Chicago, Milwaukee, St. Paul and Pacific Railroad Company."

* * * * *

On the date in question there were no extra Conductors available. Obviously had there been an extra conductor on the roster he would have been entitled to the assignment that forms the basis of the claim. While Rule 52(b) makes optional the placing of Parlor Car Conductors on trains containing only one car, we think that this option is inapplicable in this particular dispute since both trains 15 and 100 had been bulletined and assigned to carry a Conductor. The right of this Claimant to this assignment, no Extra Conductor being available, was recognized and admitted by the Respondent when Claimant was paid for actual road service of the round trip

in question, which was a part of a regular assignment rather than extra service as such.

The Claimant being entitled to the assignment was entitled to be paid as though he performed service thereon. This being true he should have been compensated under Rule 8(a).

The Memorandum of Agreement, quoted above, simply has the effect of limiting compensation paid to a designated conductor, where no Extra Conductor is available, to the straight time rate.

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 effective Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 15th day of February, 1957.

DISSENT TO AWARD NO. 7665, DOCKET NO. PC-8082

Carrier's statement of facts shows a tabulation of Parlor Car Conductors' assignments for five conductors on four trains, involving one leg of a trip each day for four days and a "rest" day at home terminal occurring for each conductor on each fifth day. Claimant worked in his turn in this assignment without break and without being held for service beyond expiration of layover, throughout the claim period. The train schedules, also shown in Carrier's statement of facts, make it at once clear that claimant could not have worked on the vacancy on trains Nos. 15 and 100, June 9 and 10, 1955, except by vacating his assignment on trains Nos. 101 and 6, June 10 and 11, 1955.

The majority state: —

> "Claimant here, Conductor A. J. Corbett, makes claim for difference in the amount paid and the amount allegedly due him had he been given assignment due him under the rules, and properly compensated for such service."

Here the majority err as the claim is not one for difference in pay rather, as stated in part 2 of claim, it is for payment of 13 hours, 40 minutes held-for-service time "* * * in addition to those sums already paid to him * * *." This error is compounded by the further statement of the majority that: —

> "The Claimant being entitled to the assignment was entitled to be paid as though he performed service thereon. This being true he should have been compensated under Rule 8(a)."

Having concluded claimant "* * * was entitled to be paid as though he performed service thereon", which apparently would be the DIFFERENCE in pay, the majority then express the contradictory opinion that "* * * he should have been compensated under Rule 8(a)", that is, the 13 hours, 40 minutes' time claimed in addition to those sums already paid to him. Claimant was not actually held for service beyond expiration of layover, nor would he have been so held because if he had been moved up to fill the vacancy of the conductor laying off sick, another conductor in the assignment would also have had to move up a turn to fill the vacancy thus created since no extra conductors were available. There is no evidence that anyone would have been held for service beyond layover when the absent conductor resumed service, since the conductors who would have moved up a turn could have remained in the turn thus acquired.

Memorandum of Agreement of April 5, 1955, provides: —

> 1. "* * * if parlor cars are operated without a conductor in violation of the Agreement, the * * * Company will not assert inability to place a conductor on the cars because of non-availability.
>
> 2. "* * * payment * * * for SUCH TRIP (when an extra man is not available) shall be made in addition to all other earnings for the month —
>
> 3. "to the regularly-assigned parlor car conductor designated by the local chairman." (Emphasis supplied.)

Statement of the majority that the Memorandum of Agreement simply has the effect of limiting compensation paid to a designated conductor, where no extra conductor is available, "to the straight time rate", is so glaringly contrary to the plain language of the Agreement as to make a travesty of the function of contract interpretation. There would be no obligation to pay anyone in the present circumstances if the Memorandum of Agreement did not contemplate payment to someone for the trip on which "parlor cars are operated without a conductor in violation of the Agreement". The local chairman was free to designate the regularly-assigned parlor car conductor and the Carrier was bound by the Agreement to pay the one designated, whether available or not, "for such trip" in addition to his other earnings for the month. The local chairman was free to designate some other regularly-assigned parlor car conductor than the claimant, but he designated the claimant and the Carrier paid him "for such trip"—the vacant trip, thus fulfilling its obligations.

For the reasons briefly given, we dissent.

/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. E. Kemp