

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 B. H. Flodin, Milwaukee District, that:

1. Rules 7, 12, 19 and 21 of the Agreement between the parties were violated by the Company in connection with Conductor Flodin's Time Sheet for the first half of October, 1955, with particular reference to the trip performed October 10th, deadhead Chicago to Portage, regular line service Portage to Chicago.

2. Conductor Flodin's Time Sheet for the first half of October, 1955, be recomputed and the Conductor paid for the deadhead service in keeping with Rule 21, and for the regular line service in keeping with Rule 19, both portions of service additionally, be computed in keeping with Rule 12.

EMPLOYES' STATEMENT OF FACTS:

I.

On October 10, 1955, Conductor Flodin was assigned as follows:

Report Chicago, 12:45 P.M.; deadhead Chicago to Portage, arriving Portage, 3:34 P.M.; release at Portage, 3:35 P.M.; report at Portage 3:35 P.M.; "... return in service as parlor car conductor on Train No. 100 Portage to Chicago, replacing Conductor W. N. Allen who ... was not available for his regular assignment ...", departing Portage 4:22 P.M.; arriving Chicago, 7:15 P.M.; released Chicago, 7:30 P.M. (Portion in quotes from Minutes of Hearing accorded Conductor Flodin, Chicago, December 15, 1955, p. 6.)

Conductor Flodin performed this assignment.

Extra Conductor Flodin arrived Portage at 3:35 P.M. and departed at 4:22 P.M. In other words, he was at Portage 47 minutes. According to the provision of Rule 13, he could not be released for a period of less than one hour, therefore, his time was continuous.

It is the Carrier's position that Extra Conductor Flodin was not released between trips. In fact, he could not properly be released for 47 minutes by reason of the provisions of Rule 13. The coupling of the deadhead trip which Extra Conductor Flodin made from Chicago to Portage with his service trip from Portage to Chicago was not used for the purpose of making a deduction for rest en route.

Therefore, it is the Carrier's position that the coupling of the trips was proper and that Extra Conductor Flodin has been properly paid a basic day of 6'50" for the 6'45" involved from the time of reporting at 12:45 P.M. to the time of release at 7:30 P.M. and we respectfully request that the claim be denied.

All data contained here in has been presented to the employees.

OPINION OF BOARD: Outcome of this case turns on the answer to this question: Was Claimant entitled to be "released" at the completion of his deadhead trip at Portage?

The portion of Rule 21 upon which Carrier relies reads as follows:

"Conductors in extra road service or deadheading on passes or with equipment or in combinations of any such services who perform less than 7 hours' service from reporting time until released shall be credited and paid not less than 7 hours, a minimum day.

"Q-1. Is it permissible to couple deadhead trips of less than 7 hours and extra road service and treat such combined service as a single movement?

"A-1. Yes, provided the conductor is not released between the different classes of service, and this combining of services is not used for the purpose of making a deduction for rest en route. * * *

There being no charge here that Carrier's action was "for the purpose of making a deduction for rest en route," we are left with Carrier's main defense, viz., that Claimant was not released between the different classes of service.

The record shows Carrier's assignment of Claimant, in part, as follows:

"Report Chicago, 12:45 P.M., deadhead Chicago to Portage, arriving Portage, 3:34 P.M.; release at Portage, 3:35 P.M.; report at Portage 3:35 P.M.; . . . return in service as parlor car conductor on Train #100 Portage to Chicago, replacing Conductor W. N. Allen who . . . was not available for his regular assignment . . . , departing Portage 4:22 P.M.; arriving Chicago, 7:15 P.M.; released Chicago, 7:30 P.M. * * *"

Argument on behalf of Carrier notes it "combined the deadhead trip with the extra road service * * * under Rule 21, and paid Claimant a basic day of 6'50".

It is Carrier's position, further, that Claimant was not released between the different services, and that the assignment to duty he was given did not provide for any release; that Claimant was on continuous time from the time he reported in Chicago at 12:45 P.M. until he was released in Chicago at 7:30 P.M. upon completion of the assignment to duty he was given. It is Carrier's further position that release time applies only at the home terminal and opposite terminal; that there is no release time at Portage.

Carrier relies heavily on Award 7658 (Carey) of this Division. That Award involved the same Agreement and parties as here, with similar contentions. It was a denial Award.

Argument offered in behalf of the Organizations is, in part, as follows:

"In the claim here before us we must first resolve two very material questions. First, does the Agreement require, under the circumstances here presented, that the individual Claimant be released at the termination of his deadhead trip? If so, the claim must be sustained, and the question as to whether or not he was released becomes academic.

"What does the Agreement provide? Rule 12 requires that:

' . . . A uniform reporting and release time SHALL be established for EACH STATION in each district.' (Emphasis supplied.)

"Question and Answer 1, Rule 7, reads:

'Q-1. What reporting and release time attaches to deadhead service?

'A-1. The established reporting time at the point the deadhead trip started and the established uniform release time at the point where the trip terminated.'

"These rules are clear and unambiguous in their terms. There are no exceptions made. Certainly we can supply none.

"Rule 12 is mandatory. It REQUIRES that a uniform reporting and release time be established for EACH station. Certainly that includes Portage, even though Carrier urges that 'there is no established release time at Portage.' Carrier would have us believe that 'uniform release time' is applicable only at 'terminals.' The rule makes no mention of terminals—it says, simply and eloquently, 'EACH STATION.' We must therefore hold that the Agreement does require the establishment of a uniform reporting and release time at Portage. * * *

"Having determined that a uniform reporting and release time MUST be established, we must determine whether that time is applicable to deadhead trips. Question and Answer 1, Rule 7, quoted supra, supplies the answer. The uniform release time applies at the point where the deadhead trip is terminated."

The sentence, "a uniform reporting and release time shall be established for each station in each district," is but one of seven paragraphs comprising

Rule 12. It does not per se constitute Rule 12. Rule 12 bears the title "Rest Periods En Route" and comes under the heading "Deductions." Each of the other six paragraphs is directly related to "rest periods en route."

For such reasons, we cannot attribute to the single sentence quoted by Organization the importance it attaches to it. It has been used out of context here.

We need not concern ourselves here with the relationship such sentence bears to the other portions of Rule 12 because "rest periods en route" are not involved in this dispute.

We will then examine Organization's contention that Question and Answer 1, Rule 7, supra, "supplies the answer."

There is no disagreement as to the established reporting time at Chicago, where the deadhead trip started, but Carrier does maintain that "there is no release time at Portage." Beyond its reliance on the quoted portion of Rule 12, the Organization offers no proof that there is a release time at Portage, where the deadhead trip terminated.

We will next treat with that portion of argument offered in behalf of Organization that

"* * * the Carrier attempted to avoid the application of the release provision of the rule by giving the individual Claimant assignment instructions to the effect that he was to go off duty at 3:35 P.M., and report for road service duty at precisely the same time, although the train upon which such service was to be performed was not due to arrive until 4:22 P.M., almost an hour later. Carrier states this, contending that it was proper to 'couple' deadheading with road services because he was so assigned. (Emphasis theirs.)

"This Board has consistently ruled in comparable disputes that assignment forms or instructions cannot properly be resorted to as a device to avoid or circumvent the application of Agreement rules. See Awards 7919, 6493, 3832, 3758 and 1662."

We will agree with the Organization that no Carrier may use assignment forms or instructions, the effect of which is in contravention of the applicable agreement.

No one can question, however, that Question and Answer 1 of Rule 21 gives the Carrier the right "to couple deadhead trips of less than 7 hours and extra road service and treat such combined service as a single movement * * * provided the conductor is not released between the different classes of service. * * *"

While Award 7658, upon which Carrier relies, was a denial Award—and Organization says that Award "is palpably in error"—there are certain factors here which distinguish this case from Award 7658.

The Claimant's deadhead service in 7658 was terminated at Milwaukee, for which there was an established release time. Beyond Organization's

reference to one portion of Rule 12, it has not been definitely established that there is a uniform release time at Portage, where Claimant Flodin's deadhead service terminated.

In reality the position taken here by the Organization, while similar to that taken in Award 7658, is less convincing than in 7658 because in the latter case there was an established release time at Milwaukee, where Claimant's deadhead trip terminated.

To evaluate properly the positions of the parties here, we have on the one hand Organization's reference to that portion of Rule 12, reading

"A uniform reporting and release time shall be established for each station in each district."

—a compelling statement when used out of context—against this positive declaration in Question and Answer 1 of Rule 21:

"Q-1. Is it permissible to couple deadhead trips of less than 6:50 hours and extra road service and treat such combined service as a single movement?

"A-1. Yes, provided the conductor is not released between the different classes of service, and this combining of services is not used for the purpose of making a deduction for rest en route."

There being no question that Carrier's assignment of duty did not provide for any release, we can only reexamine Organization's claim that the Agreement itself made it mandatory that Claimant be released at Portage.

Assuming that the portion of Rule 12, supra, constituted the entirety of the Rule, we would then have to hold that a release time at Portage was mandatory thereunder, and, consequently Claimant was entitled to be released at Portage.

We must agree with Award 7658 that for us to sustain the instant claim, "more specific language than can be found in the Agreement would be necessary to so hold."

The facts of record in this case require a denial Award.

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 Employees involved in this dispute are respectively Carrier and Employees 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 8th day of October, 1958.