Award No. 8571

Docket No. PC-8667

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, 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 Conductor F. W. Mack, Chicago Central District, that:

1. Rules 7, 9 (Questions and Answers 3 and 9), 10 (b) and 23 of Agreement between the Company and its Conductors were violated by the Company in computing Conductor Mack's pay for the second half of August, 1955, in connection with the following services:

A. On August 21, 1955, and again on August 28, 1955, Conductor Mack was called and reported for road service and was not used in this service but was not credited as required by Rule 10 (b).

B. On August 21st Conductor Mack was assigned to deadhead on pass Buffalo to Chicago and on August 28th assigned to deadhead on pass Buffalo to Cleveland but this service was not credited as required by Rules 7 and 23.

C. On August 21st Conductor Mack returned to his home station in other than his regular assignment and was held at the home station by direction of Management from 6:10 P.M., August 21st to 8:00 A.M., August 24th but was not credited held-for-service time as required by Question and Answer 3 to Rule 9.

D. On August 28th Conductor Mack returned to his home station after completing only the Cleveland-Chicago portion of the return trip in his regular assignment and was held at the home station by direction of Management from 5:50 P.M., August 28th to 8:00 A.M., August 31st but was not credited held-for-service time as required by Question and Answer 9 to Rule 9.

2. Conductor Mack's Time Sheet for the second half of August, 1955, be recomputed and he be credited and paid in keeping with the rules of the Agreement as follows:

A. Trip reporting August 20th: Outbound, 1-5/6 days; called and not used Buffalo, 6:50 hours; deadhead Buffalo to Chicago, 10:15 hours; and held-for-service Chicago, 20:30 hours.

B. Trip reporting August 27th: Outbound, 1-5/6 days; called and not used Buffalo, 6:50 hours; deadhead Buffalo to Cleveland, 6:50 hours (report Buffalo, 6:50 A.M.; depart Buffalo, 7:10 A.M.; arrive Cleveland, 11:00 A.M.; release Cleveland, 11:20 A.M.); portion of return trip in regular assignment, Cleveland to Chicago, 1-1/10 days; and held-for-service Chicago, 20:30 hours.

EMPLOYES' STATEMENT OF FACTS:

I.

On August 20, 1955, Conductor Mack held a regular assignment in Line 5104. The Operation of Conductors form covering this regular assignment (confirmed by the Itinerary given Conductor Mack) required him to operate in charge of certain designated lines outbound Chicago to Buffalo and to operate in charge of other designated lines inbound from Buffalo to Chicago. Copy of this Operation of Conductors form is attached hereto as Exhibit No. 1.

Conductor Mack performed the outbound portion of this assignment as set forth in the Operation of Conductors form, arriving Buffalo on August 21st.

The inbound portion of the assignment as determined by the Operation of Conductors form established that Conductor Mack would operate on NYC Train No. 35 between Buffalo and Chicago in charge of Pullman cars of certain designated lines. NYC Train No. 35 operated between New York and Chicago and when this train arrived at Buffalo, the cars covered in the Operation of Conductors form (which cars originated in Boston and were destined for Chicago) were attached to the train.

Throughout the period here involved NYC Train No. 35 continued to operate between New York and Chicago.

Effective August 19th B&A-NYC Train No. 35, Boston to Buffalo, was annulled due to flood conditions in New England. As a result a revised Operation of Conductors form was issued by The Pullman Company annulling the operation of the Boston Conductors between Boston and Buffalo. Operation of the Conductor assignment between Boston and Buffalo was not again resumed until October 10th. (See Exhibits Nos. 2 and 3 attached.)

Hence on August 21st the return trip portion of Conductor Mack's assignment, as established by the Operation of Conductors form governing this assignment, was not in existence since the operation of the Boston-Chicago Pullman cars had been annulled by the Company and the cars were no longer arriving in Buffalo.

Since the Company was aware that Conductor Mack's assignment as established by the Operation of Conductors form was no longer in existence

Cleveland and Chicago. In this connection, the fact should be noted that the Organization claims that for the work performed by Mack on August 28 between Cleveland and Chicago he should be credited and paid 1-1/10 days for the "portion of the return trip in regular assignment Cleveland-Chicago" (Exhibit G, p. 2). The Organization states, further, that on "August 28 Conductor Mack returned to his home station having completed only the Cleveland-Chicago portion of the return trip in his regular assignment" (Exhibit G, p. 1). The Organization does not explain, however, on what basis it claims that on August 28 Mack was in incompleted regular service. Question and Answer 1 of **RULE 9. Held for Service** defines incompleted regular service as service which is terminated at a point where no specified layover is established. In the instant case the service terminated at Chicago, at which point a specified layover was established. The Company could not under these conditions consider the trips of August 21 and 28 as incompleted regular road service. Finally, the Company wishes to point out that Conductor Mack would be entitled to held-for-service in Chicago, his home station, only in the event it could be proved that he was held at home station by direction of Management beyond expiration of layover. This the Organization cannot do.

CONCLUSION

In this ex parte submission the Company has shown that on the trips of August 20-21 and August 27-28, 1955, Conductor Mack operated full time in regular service and properly was paid under the provisions of **RULE 20. Regular Assignments—Full Time.** Also, the Company has shown that the rules cited by the Organization, Rules 7, 9 (Questions and Answers 3 and 9), 10 (b) and 23, are not applicable to this dispute. The rules cited by the Organization would be applicable to this dispute only in the event the Organization could establish that on the dates in question Mack operated in incompleted regular service. This the Organization has not done and cannot do.

The Organization's claim in behalf of Conductor Mack 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: Claimant alleges violation of Agreement in computing Conductor F. W. Mack's (claimant's) pay for the second half of August, 1955.

A study of the record discloses these facts which are not disputed. The claimant was a regularly assigned Pullman conductor operating between Chicago and Buffalo, on NYC #46 outbound (line 5104) and NYC #35 (line 5247) inbound. The assignment required on duty time of 24 hours and 50 minutes for the round trip with a layover at the opposite terminal of 8 hours and 35 minutes. In addition, forty-eight hours relief time at the home terminal was provided after three round trips.

On August 20, 1955, Conductor Mack operated the outbound run as scheduled and in the ordinary manner. However, on the inbound run, when he reported for road service as usual, he found that the Boston to Chicago Pullman cars had not arrived from Boston as that train had been annulled

due to flood conditions Boston to Buffalo. Pullman Conductor Mack was given a pass and told to ride the coach on the train (Buffalo to Chicago) his home station. The train arrived 45 minutes late. No change was made in his compensation rate, and he performed no other service than doing what he was told to do. He was paid the usual 4 days' compensation for this trip. After the August 20-21 trip, Claimant Mack was credited and paid four days in accord with the customary 48 hour relief period after the third round trip in the cycle.

The next trip out (trip #1 of the three trip cycle) would be #46 Aug. 24, 1955. There appears to be no dispute as to this trip. On August 27, 1955 (the 2nd trip of the cycle) per line 5104 train #46 Conductor Mack operated on schedule, arriving Buffalo 5 minutes late, and was released at 9:50 P.M. The next morning he reported for work on train #35 as per schedule at 6:20 P.M. Aug. 28, 1955, but as the train arrived without Pullman equipment, he rode pass in coach to Cleveland where he took charge of Pullman equipment to Chicago. The train arrived 25 minutes late in Chicago, Conductor Mack being released at 5:50 P.M. For this trip the Carrier paid the usual 4 days' compensation.

The Organization claims that Conductor Mack, who was paid on the basis that he would have been paid had he performed the work, should have been paid at deadhead, held for service, etc., rates in lieu thereof, which rates aggregate higher total compensation. The issue is not what pay the claimant received, be it higher or less, but whether he was paid according to the terms of the contract. When claimant reported for duty at a time when no cars were available and there were therefore no passengers, this does not automatically bring Rule 10 (b) into operation, as reporting for duty and not used. Awards so holding are invariably coupled with an assignment to other extra or temporary duty (4648 and other awards). In this instance claimant reported for regular road service duty, and there were no cars to supervise nor passengers to load. He was given a pass and told to ride the coaches to his usual home terminal. The claimant terms this use of a pass as deadheading. The contract fails to give a definition of deadheading, but Rule 7 in regard to "Deadhead Service" is revealing. As the entire contract must be read and interpreted as a whole, Rule 6 governing regular and extra service throws light on the nature of deadheading service. Under Rule 6, regular and extra service time is computed from the time required to report for duty until the time released, while under Rule 7, deadhead service is something less than this and credit is allowed only up to 10:30 hours for each 24 hour period from time required to report. Rule 6 and Rule 7 compute both regular and deadhead service from time required to report not in regard to time spent on cars, thus in this instance, as a part of a regular assignment to road service may be service not on cars, the complete absence of cars, does not restrict the service performed to deadhead service.

Deadhead service, per se, is travel, at the direction of the Carrier, either to a point where service is to commence, or from a point where service has terminated, back to the employe's home station. It is travel to or from regular or extra service which is essential. Here the claimant was performing in a greater capacity than deadhead service for the carrier. He was traveling on the prescribed train in the carrier's service, tending to what business the Pullman Company had on that train. His assignment had not been changed from the operation of conductor's form on which he had bid.

The burden of proving the claim is on the claimant. The claimant was the owner of a regular run on NYC trains #35 and 46. He traveled these runs in his normal cycle for the carrier, and was compensated in the usual

manner. We are not convinced that he performed any other service for the carrier than that which he would normally perform. It would be abstract logic to hold that performing less was performing more. The foregoing makes the question of held-for-service time at home station moot.

The claim is denied in accord with the Opinion.

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 Employe involved in this dispute are respectively carrier and employe 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 contract 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 17th day of December, 1958.