

Award No. 10446

Docket No. PC-10238

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

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

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen claims for and in behalf of Parlor Car Conductor R. E. Michau, Milwaukee District, that:

1. Rules 7, 12, and 48 of the Agreement dated January 1, 1951, between The Milwaukee Road and its Parlor Car Conductors were violated by the Company when on May 13, 1957, Conductor Michau was not allowed the 15-minute established release time in Minneapolis, Minn., after completing a deadhead trip from Chicago, Ill., to Minneapolis.

2. We now ask that Conductor Michau be credited and paid for this 15 minutes.

EMPLOYEES' STATEMENT OF FACTS:

I.

On May 12, 1957, Conductor R. E. Michau was given an assignment to report at Chicago, Illinois, 10:45 P. M., depart 11:00 P. M.; deadhead on Milwaukee Road train #1 to Minneapolis, arriving Minneapolis at 8:25 A. M. May 13, 1957. He released himself from the deadhead service trip at 8:40 A. M., May 13, 1957, or 15 minutes after arrival in Minneapolis. Elapsed time 9:55 hours. Conductor Michau performed this deadhead service as instructed. The Company changed Conductor Michau's Time Sheet to show that he was released in Minneapolis at 8:25 A. M. instead of 8:40 A. M. Elapsed time 9:40 hours. Management has declined to allow Conductor Michau credit and pay for this 15 minutes.

II.

Rule 7 reads in part as follows:

"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 10:15 hours for each 24-hour period

refused to answer questions put to them by the Carrier representative. Claimant Michau, who, incidentally, is Local Chairman of the Parlor Car Conductors' Organization, was several times asked the question as to whether or not he had ever received release payment for period of release in connection with deadhead assignment. He repeatedly refused to answer. We submit that Claimant Michau, as Local Chairman of the Parlor Car Conductors' Organization, is well aware of the fact that payment such as the employes are seeking by Board Award, in this case, has never been made to parlor car conductors under the schedule rules.

Further evidence of that fact is the request of the employes to modify the Deadhead Service Rule to include reference to the "uniform release time". In the revision of the various rules which became effective October 16, 1957 the parties made no change in Rule 7—Deadhead Service.

Under the schedule rules an arbitrary payment, such as the employes are seeking in this case, has never been applied. The Carrier submits there is no logical or reasonable basis for a conductor receiving an arbitrary payment for a period of time after release upon arrival following a deadhead trip where no service whatever is performed.

The claim is not supported by the schedule rules and we respectfully request a denial award.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Because the Parlor Car Conductor who was scheduled to operate on Train 2, Minneapolis to Chicago, on May 13, 1957, reported off sick, the Claimant was given an assignment on May 12, 1957, to deadhead Chicago, reporting at 10:45 P. M., departing 11:00 P. M. on Train 1, to Minneapolis, release at 8:25 A. M. at Minneapolis, and to report for service at 11:45 A. M., May 13 on Train 2. Upon arrival at Minneapolis on May 13, Claimant released himself at 8:40 A. M. taking credit for nine hours and fifty-five minutes. The Timekeeper changed this time to nine hours and forty minutes and wrote on the Claimant's copy of the time sheet:

"According to reports in our office you arrived in Mpls on Train #1 May 13th at 8:22 A. M., therefore we will credit your time until 8:25 A. M. instead of 8:40 A. M."

Petitioner contends that the established uniform release time at Minneapolis is fifteen minutes and that the refusal of the Carrier to allow Claimant credit and pay for such time violated Rules 7, 12 and 48 of the applicable Agreement.

Carrier maintains that the claim is not supported by Rules 7 and 12, that Rule 48 was not violated, that throughout the years the payment claimed has never been paid following release on arrival at Minneapolis in connection with deadhead service, and that the uniform release time for deadhead service has always been the time of arrival.

The Rules relied on by the Petitioner read, insofar as pertinent here, as follows:

"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.

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. . . ."

"RULE 12. REST PERIODS EN ROUTE

"For regular and extra service movements (except 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; . . .

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

"RULE 48. NOTIFICATION OF DISALLOWED TIME

"When time claimed by a conductor as indicated on his time sheet is changed or disallowed, the Timekeeping Department shall furnish written advice giving the reason why the time as claimed was not allowed, and specifying the rule under which the time as corrected was computed. . . ."

The undisputed facts show that the claim here involves deadhead service and seeks recovery for fifteen minutes release time at the point where the deadhead trip terminated. By its terms, Rule 12 does not appear applicable to deadhead service. The Rule concerns rest periods en route for "regular and extra service movements." By reason of its appearance in the Rule, the provision therein for the establishment of a uniform reporting and release time cannot be excised from the context of the Rule and must be read in relation to "regular and extra service movements" and the rest periods en route as therein provided. Rule 12 makes no reference to deadhead service.

Rule 7 is titled "Deadhead Service" and deals with "Conductors deadheading on passes, or on cars on company business . . ." Q-1, under the Rule, asks "What reporting and release time attaches to deadhead service?" and A-1 replies "The established reporting time at the point the deadhead trip started and the established uniform release time at the point where the trip terminated." Although the Rule concerns deadhead service, there is nothing in its terms to indicate whether the phrase "established uniform release time"

in A-1 refers to such release time regardless of the kind of service involved or to a uniform release time established for deadhead service. As a result of this uncertainty in the Rule, it becomes necessary to consider the extrinsic evidence.

The Carrier asserts that:

"It is also the Carrier's position that all sleeping and parlor car conductors have been deadheaded from Chicago to Minneapolis under similar conditions hundreds of times throughout the years and there has been no arbitrary payment representing so-called release time such as the employes are claiming in connection with this case."

and that:

"The uniform release time for deadhead service is the time of arrival and that is the manner in which the schedule rules have been applied throughout the years that a schedule agreement has been in existence."

In support of its position, Petitioner cites Operation of Conductors' Form covering Conductors' operations on Trains 101 and 6, issued September 27, 1953, which indicates that fifteen minutes was allowed for release time at Minneapolis, and Operation of Conductors' Form covering Trains 5 and 6, issued July 29, 1954, which also indicates that fifteen minutes was allowed for release time at Minneapolis. These Forms related to service trips. There is no evidence that the fifteen minutes release time at Minneapolis shown by these Forms has been applied to deadhead trips terminating at that point, or that the release time at that point for deadhead trips has been the same as for regular service, or that fifteen minutes has been the release time established for deadhead trips which terminated at Minneapolis. In the absence of such evidence, and for the reasons already indicated, it must be concluded that Petitioner has not established violation of Rules 7 or 12 as asserted in the claim.

For similar reasons, and because the record shows without dispute that written explanation was given on the Claimant's copy of the time sheet for the disallowance of the fifteen minutes claimed by him as release time on the termination of his deadhead trip, no violation of Rule 48 appears.

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

That the parties waived oral hearing;

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 Agreement was not violated.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schuly
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1962.