

Award No. 10508

Docket No. PC-10282

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, 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 contends that Rules 22 and 49 of the Agreement between The Milwaukee Road and its Parlor Car Conductors were violated when:

1. Under date of November 2, 1957, two parlor cars in service (Loading Nos. 1170 and O I i) were operated on train No. 117 between Chicago, Ill., and Madison, Wis., without the services of a Parlor Car Conductor.

2. Because of this violation we now ask that Conductor D. R. Hockenbury be credited and paid 6:50 hours, a minimum day, for the outbound trip Chicago to Madison.

3. We also ask that Conductor D. R. Hockenbury be credited and paid 6:50 hours, a minimum day, for the inbound trip Madison to Chicago, because two parlor cars in service, (Loading Nos. 1180 and O I i) were operated on train No. 118 on November 2nd from Madison to Chicago, without the services of a Parlor Car Conductor.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of October 16, 1957 on file with your Honorable Board, and by this reference is made a part of this submission the same as fully set out herein.

On November 2, 1957, two parlor cars in service were operated on Milwaukee Road train No. 117 between Chicago and Madison without the services of a Parlor Car Conductor.

Train No. 117 is scheduled to depart from Chicago, Illinois at 9:30 A. M. and is scheduled to arrive in Madison, Wisconsin, at 12:20 P. M., same date.

On November 2, 1957, Milwaukee Road train No. 118, carrying two parlor cars in service, operated from Madison to Chicago without the services of a Parlor Car Conductor.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The record in this case discloses that on November 2, 1957 the Carrier operated train No. 117 from Chicago to Madison without a parlor car conductor. On the same day the Carrier operated train 118 from Madison to Chicago also without a conductor. Train 117 departure and arrival times were 9:30 A. M. and 12:20 P. M. Train 118 times were 5:00 P. M. and 7:50 P. M. A claim was filed with the Carrier for a minimum day's pay for each trip. The Carrier allowed the claim on the basis of continuous time (to wit 11:20 hours) while the Organization contended that the claim should have been allowed for 13:40 hours.

The issue before this Division then is whether, under the facts and circumstances of this case, the Carrier had the right to combine two service trips or whether the Agreement prohibited the combining of these trips and that each must be treated separately and that the minimum day rule is applicable to each trip.

The Organization contends that their position is sustained by the application of Rules 6, 12, 18, 19 and 33.

"Rule 6 reads as follows:

'REGULAR AND EXTRA SERVICE. Time for regular and extra service, except deadheading, shall be credited from time required to report for duty at the uniform reporting time until released at the uniform release time, subject to the provisions of Rule 19.'

"Rule 12 reads as follows:

'UNIFORM REPORTING AND RELEASE TIME. A uniform reporting and release time of not less than fifteen (15) minutes shall be established for each station in each district.'

"Question and Answer 3 to Rule 18 read as follows:

'Q-3. What is non-road service?

'A-3. Non-road service is any work, other than that designated or defined herein, performed at terminals or stations.'

"Rule 19 reads as follows:

'6:50 HOUR MINIMUM PAYMENTS. Conductors in extra road service or deadheading on passes or with equipment or in combinations of any such service who perform less than 6:50 hours' service from reporting time until released shall be credited and paid not less than 6:50 hours, a minimum day.

'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 service is not used for the purpose of making a deduction for rest enroute.

Q-2. Under this rule is it permissible to couple road service with station duty and treat the combination as a single service?

'A-2. No.'

"Rule 33(b) and Question and Answer thereto, read as follows:

'(b) Extra conductors shall be furnished an assignment slip showing time and place required to report for duty, also destination, for each one-way trip in extra service or dead-head.'

'Q-1. What is meant by one-way trip?

'A-1. Any trip from reporting time to release time of conductor. An exception to the uniform release time will be made in connection with a round trip where conductor is not released because of cars occupied by passengers or possessions, but it is understood there will be no rest deductions unless in conformity with the rest deduction rule on a one-way trip.'"

The Carrier member, on the other hand, has argued that Awards 7658 and 8493 between the present parties have already decided the precise issue presented here and that therefore under numerous decisions of this Division these decisions are controlling unless we are prepared to hold that they are palpably wrong. The Organization in answer to this has stated that Award 6110 is more nearly similar to the present situation.

With the basic position of the Carrier member there is no dispute. However, an examination of Award 7658 shows that this Division distinguished Award 6110. In its opinion it stated that the Claimant claimed the right to recover on the basis of Award 6110. The Opinion of the Board states "Award 6110 involved coupling two road service trips in a round trip assignment which presented a different situation and was based on the principle of Award 4659." Thus, it can be seen that Award 7658 recognized a difference in situations and therefore cannot be held to be controlling.

In Award 8493 this Division stated that the position in that case was less convincing than in Award 7658 and therefore it followed a fortiori that Award 7658 was controlling. Both Awards 7658 and 8493 involved the question of the coupling of deadheading trips with a service trip, while this involves the right to couple two service trips. This being so these Awards are not controlling as the facts are dissimilar.

An analysis of the Rules involved in this Agreement shows that Rule 6 provides that the time for regular and extra service shall be credited from time required to report to duty **at the uniform reporting time until released at the uniform release time.** (Emphasis ours.)

Rule 12 established the uniform reporting and release time of not less than fifteen minutes and the record shows that the uniform reporting and release time in Madison is fifteen minutes.

Rule 19 is the Rule which is primarily involved as it determines what constitutes a minimum day. Rule 19 provides that "conductors in extra road service or deadheading on passes or with equipment in combination of any such services who perform less than 6:50 minutes shall be credited and paid not less than the minimum day." Q and A No. 1 provides for the allowing

of coupling of deadhead and extra road service and Q and A No. 2 prohibits the coupling of road service and station duty. We thus see by the questions and answers that the coupling of deadheading and road service is expressly permitted to be treated as a single movement while the coupling of road service with station service (see Q and A 3 to Rule 18 for definition of station service) is expressly prohibited. At the same time Rule 19 is silent as to whether it is permissible to couple two extra road service trips.

Rule 33(b) however provides that extra conductors shall be furnished an assignment slip "showing time and place required to report for duty, also destination, for each one way trip in extra service or deadhead."

Q and A 1 to Rule 33 defines one way trip as any trip from reporting time to release time of conductor. This must be construed to deal with the uniform reporting and release time established in Rule 12. The Q and A to Rule 33 provides that there is an exception to the uniform release time "if the conductor is not released because of cars occupied by passengers or possessions." Thus, it seems clear that the Carrier has established an exception to the uniform release time. In the case at hand due to the fact that the two trips in question were never made there is nothing in the record to show that the conductor was needed to protect passengers or possessions: thus, under Rule 33(b) he would have been released. A subsequent assignment to duty would therefore be a new assignment and it would not be possible to couple the two extra road service trips as presented in this case.

If the Carrier is privileged to combine any two service trips the question and answer to Rule 33 would be unnecessary. It is our judgment therefore that Rule 33 and the questions and answer thereto determine the right to couple service trips under Rule 19. This being so, the Agreement was violated. However, the claim as presented cannot be sustained as the record discloses that the Claimant was paid for 11:20 hours. He is thus entitled to be paid the difference between 13:40 hours and 11:20 hours.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

AWARD

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April 1962.