

Award No. 10787
Docket No. PC-10889

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, 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 W. E. Langan, Hoboken District, that The Pullman Company violated Rules 10 (b) and 22 of the Agreement between The Pullman Company and its Conductors when:

1. The Company deducted \$15.99 from the first half of March pay of Conductor Langan, for the time he performed station duty in the Washington Terminal on January 8, 1957.

Under date of April 24, 1957, the Company advised Conductor Langan that it made an error in deducting \$15.99 from his first half of March pay, i.e., the Company deducted \$3.60 too much and was issuing a time check for that amount.

2. We now ask that this deduction of \$15.99, minus \$3.60, or \$12.39 which was improperly made from Conductor Langan's pay, be restored.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties bearing the effective date of January 1, 1951 and amendments thereto on file with your Honorable Board, and by this reference is made a part of this submission, the same as though fully set out herein.

II.

On January 8, 1957, Conductor Langan, a regularly-assigned Conductor of the Hoboken District, arrived in Washington, D. C., in service, on his assigned train, B&O #5, at 5:05 P. M., scheduled to be released at 5:25 P. M., same date. Conductor Langan had a specified layover in Washington, from 5:25 P. M. to 9:35 P. M., same day. He was met by a representative of the Company, who instructed him to remain in charge of the two extra Pullman

Company has shown that Conductor Langan is not entitled to additional compensation and that in the event the claim is considered by this Board on its merits it should be denied.

All data submitted 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 arrived at his away from home terminal at Washington on January 8, 1957 at 5:05 P. M. and was scheduled to be released from duty at 5:25 P. M. He was instructed to remain on duty to protect two extra military cars, which were destined to Columbia, South Carolina, leaving on Southern train #37 due to arrive at 5:55 P. M.

Petitioner contends that when Claimant was required to remain on duty in the Washington Terminal, protecting cars which were not regularly scheduled to be operated in his regular assignment on B & O No. 5, that paragraph (b) of Rule 10 is applicable and requires payment of 6.50 hours. The Carrier maintains that the station duty performed by Conductor Langan beyond scheduled arrival time should be paid as provided in the Memorandum of Understanding, to wit for actual time required to remain on duty, with a minimum credit and pay of one hour in each instance.

Claimant performed station duty as instructed, from 5:05 to 5:55 when he turned the military cars over to the Connecting Conductor and was released at 6:15 P. M., claiming credit on his time sheet for 6.50 hours under the provision of Rule 10(b). The Timekeeper paid for this time, but under date of March 28, 1957, the Carrier informed Claimant a deduction would be made in the amount of \$15.99 account error, later the amount was changed to \$12.39.

Under date of April 9, 1957, Claimant initiated the instant claim, which has been progressed in accordance with the Agreement, it was denied at all stages of its handling on the property, and is now here for adjudication.

We set forth the rules involved.

"RULE 10. Station Duty.

(b) When a regularly-assigned conductor is required to perform station duty, load trains, or when called and reporting for road service and not used, such time shall be credited on the hourly basis and paid for in addition to all other earnings for the month, with a minimum credit of 7 hours for each call, except as provided in paragraph (d) hereof."

"MEMORANDUM OF UNDERSTANDING

"(1) It is hereby understood and agreed between The Pullman Company and its conductors, represented by the Order of Railway Conductors of America, that an exception to Rules 6, 10, 20 and 21 is made to provide for credit and payment of time as outlined below when a conductor is required to remain on duty after arrival beyond the normal release period as shown in the 'Operation of Conductors Form' for the specific purpose of turning over a car or cars in his charge to the conductor of the train on which the car or cars are regularly scheduled to be further operated:

(a) When a conductor is required to remain on duty 30 minutes or less at an 'outlying point' (where a conductors' roster is not maintained), as stipulated in paragraph (1), such time shall be added to the conductor's other accumulated hours for the month and he shall be credited for such time as though it were part of his regular assignment.

(b) When a conductor is required to remain on duty in excess of 30 minutes at an 'outlying point' (where a conductors' roster is not maintained), as stipulated in paragraph (1), he shall be credited and paid as station duty, in addition to all other earnings for the month, for actual time required to remain on duty, with a minimum credit and pay of one hour in each instance."

Carrier in its submission raises a procedural issue, but it was not argued by the Carrier before the Referee. It is urged that the instant claim was not handled in accordance with the Railway Labor Act, and that issues now raised, were not raised on the property. With this we cannot agree, the Carrier was informed in regard to the claim on the property, and all issues were raised by the Claimant.

The Memorandum of Understanding provides, in clear and unambiguous language, that when a Conductor is required to remain on duty to turn over regularly scheduled cars to the Connecting Conductor, he is credited and paid actual time, but not less than one hour. In the instant case Claimant was required to remain on duty with two extra cars (military cars), which were not regularly scheduled to be operated on B & O Train No. 5, but were destined to Columbia, South Carolina via Southern Train No. 37; therefore Rule 10(b) is applicable, rather than the Memorandum Agreement, and claim must be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1962.