

Award No. 10925

Docket No. PC-12212

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, 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 that The Pullman Company acted arbitrarily and capriciously and in violation of the Agreement when, under date of March 23, 1960, it assessed a warning against the record of Conductor I. M. Hood of the P. T. District, on the charge that:

"You deliberately submitted time sheets without authority, for two weeks' vacation pay for pay periods in May, 1959."

We further hold that the charges brought against Conductor Hood were barred by the terms of the Agreement between The Pullman Company and its Conductors.

We now ask that the warning assessed against Conductor Hood's record be expunged from his record .

EMPLOYES' STATEMENT OF FACTS:

I.

Conductor I. M. Hood, P. T. District, was a regularly assigned conductor during the month of January, 1959. The Pullman Company, in accordance with the provisions of Question and Answer 1 to Section 12 of Vacation Agreement in effect on January 1, 1959, prepared vacation schedules and posted them in a place accessible to the conductors of the Penn. Terminal District. Question and Answer 1 of the Vacation Agreement read as follows:

"Q-1. When shall vacation schedules be prepared and posted?

"A-1. Vacation schedules shall be prepared by January 1 and posted not later than January 15 of each calendar year covering vacations to be taken during that year. They shall be posted in a place accessible to all conductors affected."

Conductor Hood, in accordance with the provisions of Question and Answer 2 to Section 12 of the Vacation Agreement, designated the first half

CONCLUSION

In this ex parte submission the Company has shown that Conductor Hood deliberately submitted time sheets without authority for two weeks' vacation pay for pay periods in May 1959. Also, the Company has shown that the charges brought against Conductor Hood were not barred by the terms of the Agreement between The Pullman Company and its conductors. Finally, the Company has shown that Awards of the National Railroad Adjustment Board support the Company in this dispute.

The claim that the Company improperly assessed Conductor Hood with a "Warning" under date of March 23, 1960, is without merit and 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 the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: It appears that a conflict had arisen between the Claimant, Conductor Hood, and the Carrier, The Pullman Company, concerning Claimant's application for a vacation for the first half of May 1959 which resulted in the Carrier refusing Claimant's request and the Claimant protesting Carrier's decision.

With the coming of May, 1959, Claimant Hood submitted time sheets for pay, taking credit for two weeks vacation in May 1959, without authority and without approval by the district office, as required. The time-keeper at the General Office paid Claimant even though the entries were not officially approved. The time sheets were returned to Claimant during the first half of June, 1959. No complaint for irregular conduct was presented against him until January 4, 1960.

The Petitioner insists that the complaint made against Claimant was barred by the time limit Rule of the Agreement which is, as follows:

"RULE 49. (f) The conductor shall be notified in writing of the time and place of hearing and the specific charge against him not later than 60 days from the date the Company receives the original complaint. If the Company fails to notify the conductor of the time and place of hearing or fails to make a specific charge against him within 60 days from receipt of the original complaint, the complaint shall be barred."

The Carrier urges that it had no knowledge of Claimant's action in submitting unapproved time sheets until in a conversation with the Signout Clerk, on November 9, 1959, Claimant advised him that he had already been

paid for two weeks of his vacation in May. The Superintendent received a written report of the incident on December 11, 1959. It is Carrier's contention that both of these dates were within the time limits of Rule 49, supra. Carrier further contends that the original filing of the unapproved time sheets cannot be construed as "the date the company received the original complaint."

In an interpretation of Rule 49 found in Award 6092 (Whiting) we note the following:

"The Company shows only that information as to the complaint did not reach the district superintendent until February 6, 1951. **The rule specifies receipt by the Company not receipt by the district superintendent.** On the evidence presented in this docket we think the complaint must be deemed to be barred by Rule 49."
(Emphasis ours.)

In a subsequent award, Award 10100 (Rose), which was a denial award, we find the following statement: "**the evidence does not show that the irregularities with which Claimant was charged were apparent or discoverable** when he turned in his cash fare checks and reports of cash fare sales to the Cashier, Award 6092, cited by the Employees cannot be regarded as controlling here." (Emphasis ours.)

It must be concluded from a reading of the foregoing award that the date the Company receives the original complaint under Rule 49 is that date upon which the "irregularity is apparent or discoverable". In the instant case, that there had been an irregularity by the Conductor in the submission of these unapproved time sheets could have been readily ascertained by a cursory examination of the same by any employe of the Company handling the same. There was nothing hidden nor concealed. Under all the circumstances we must conclude that Award 6092 is controlling and the complaint by the Carrier was barred by the provisions of Rule 49.

Having reached this conclusion we find it unnecessary to discuss other issues presented.

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 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 has been violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1962.