

Award No. 10993

Docket No. PC-12232

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,
PULLMAN COMPANY**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Chicago Division 715, respectfully calls your attention to the Operation of Conductors form dated May 5, 1960, covering the conductor run on Soo Line Trains 3 and 4 between Chicago, Illinois, and Duluth, Minnesota, designated as Line 705, effective May 13, 1960.

On the back of this form it states:

"Line operates daily except Saturday with 3 men on 3½ man basis. One conductor receives 24 hours and the other two conductors receive 24 hours additional relief at Chicago."

We hold that this form is made out incorrectly and not in compliance with the rules of the Agreement between The Pullman Company and its Conductors.

The Memorandum of Understanding Concerning Annulment of Runs, found on page 100 of the Agreement, provides that if an assignment in a run does not operate for any reason for only one day, the conductor shall be credited and paid held-for-service time as provided in Rule 9.

We contend that because Trains 3 and 4 do not run on Saturday, they are annulled, and that the conductor due out on Saturday is entitled to be credited and paid held-for-service time as outlined in the Memorandum. Likewise, the conductor who arrives in Duluth on Saturday morning has an established layover until 6:10 P.M. the same day, and if he is held beyond that time he is entitled to held-for-service time as provided in Rule 9(c).

This same issue has been decided by Third Division Award 7919, wherein the Company made a notation on the back of the Operating form contending that such notation governed rather than the rules of the Agreement. In other words, the Company is doing indirectly what it may not do directly.

Because of this violation we now ask that the Operation of Conductors form be corrected to comply with the rules of the Agreement; that Conductors C. A. Brown, J. E. Gleason and G. C. Howard, who are regu-

larly assigned to this run, or their successors, be credited and paid held-for-service time in Chicago as provided in Rule 9(a), and that the conductor who arrives in Duluth on Saturday morning is held beyond 6:10 P.M. the same day, he be credited and paid held-for-service time in accordance with Rule 9(c).

This claim to be effective with the first violation occurring after May 13, 1960, the date the incorrect Operation of Conductors form became effective, and continuing until the form is corrected in accordance with the rules.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between The Pullman Company and its Conductors, dated September 21, 1957, and by reference thereto is made a part of this brief.

I.

Under date of May 5, 1960, The Pullman Company issued an Operation of Conductors form to become effective May 13, 1960, to cover the conductor run on Soo Line Trains 3 and 4 between Chicago and Duluth; for accounting purposes designated as Line 705. This form shows there are three regularly assigned men to the run. The form further shows that the conductor reports in Chicago on the first day, at 4:15 P.M., and is released in Duluth the following morning, i.e., the second day, at 7:00 A.M. Elapsed time for the outbound trip 14:45 hours—less relief en route 4:00 hours, time on duty 10:45 hours. The conductor reports in Duluth at 6:10 P.M. the same day of arrival, i.e., the second day, and is released in Chicago at 7:50 A.M. the following morning, which is the third day. Elapsed time for the inbound trip 13:40 hours, less relief en route 4:00 hours, time on duty 9:40 hours. The total service hours for the round trip (10:45 hours outbound and 9:40 hours inbound) equals 20:25 hours.

The average hours per 30-day month for a run requiring three regularly assigned conductors where the total service hours for the round trip are 20:25 equals 204:10 hours.

The Operation of Conductors form issued by the Company covering the above run further shows that the average service hours per month are 175:00 hours. Under the space provided for additional relief at home terminal the Company placed a notation reading "24 hours after two (2) round trips—See Remarks." The remarks referred to are found on the back of the Operation of Conductors form and read as follows:

"Line operates daily except Saturday with 3 men on 3½ man basis. One conductor receives 24 hours additional relief after two round trips at Duluth and other two conductors received 24 hours additional relief at Chicago . . .

"Sides:	Relief Sat.
#A	Sunday — Wednesday
#B	Monday — Thursday
#C	Tuesday — Friday
Relief Saturday"	

A copy of the Operation of Conductors form is attached as Employees' Exhibit No. 1.

All data submitted herewith in support of the Company's position have been submitted to the claimants or their representatives and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: An Operation of Conductors Form was issued to become effective May 13, 1960, to cover the Conductor run on Soo Line Trains 3 and 4 between Chicago and Duluth, designated as Line 705. There were three regularly assigned Conductors to the run. The Form shows that the Conductor reports in Chicago on the first day at 4:15 P. M. and is released in Duluth the following morning at 7:00 A. M. and is released from duty until 6:10 P. M. the same day, when he reports for duty and is released at Chicago at 7:50 A. M., the following morning. This Conductor, then, has a home layover of 32 hours 25 minutes, or until 4:15 of the following day. The assignment was scheduled to operate daily except Saturdays of each week from both terminals. The Conductors on Saturdays were given an additional 24 hours layover at both Chicago, the home terminal, and Duluth, the away from home terminal. The operating form as required by Agreement Rules, specified service hours, duration of layovers and other known details.

On the reverse side of the Operating Form it was stated:

"Line operates daily except Saturday with 3 men on 3½ man basis. One conductor receives 24 hours additional relief after two round trips at Duluth and the other two conductors receive 24 hours additional relief at Chicago."

Petitioner contends that the Conductor Claimants should be credited and paid for "held-for-service" time at Chicago and Duluth as provided for in Rule 9 of the Agreement, effective September 21, 1957, because of Carrier issuing an incorrect Operation of Conductors Form in violation of Rules 9 and 15, Question and Answer 1 of Rule 24 and the "Memorandum of Understanding Concerning Annulment of Runs" and in support of its contention relies, principally, on Awards 3758, 7919 and 10707, 10708, 10709.

It is the Carrier's position, on the other hand, that the Operation of Conductors Form in question is in conformity with all of the Rules, that the "Memorandum of Understanding Concerning Annulment of Runs" and Question and Answer 1 of Rule 24, were neither violated nor involved in this dispute and that the Awards cited by the Petitioner do not support this claim.

Petitioner has the burden of proving that the Operation of Conductors Form was not in conformity with the Rules for if the Form for Line 705 was in accordance with the Agreement there can be no basis for the claim. The Carrier has contracted with the Petitioner that each regular assignment must conform to certain agreed upon standards and, consequently, the Operation of Conductors Form to be valid, must conform to the Agreement and Memorandum Agreements.

At the outset, there can be no dispute but that the railroads establish the schedules on which trains and Pullman equipment are to operate. The Soo Line Railroad decided not to operate Trains 3-4 on Saturdays out of either Chicago or Duluth. Carrier has the right to make changes

in Conductor operations at any time to meet changing conditions. Conditions brought about by a change in schedule in the instant case justified the Carrier's revamping its operations to prevent overtime and there is nothing in the Rules of the Agreement which prevented it from so doing. Petitioner has no cause for complaint unless the change in some way violates a Rule, or Rules of the Agreement.

(See Award 6168—Wenke; Award 6270—Smith; Award 6296—Smith; Award 6655—Wyckoff and others.)

As indicated before, Petitioner's principal contention is—that the Form violates Question and Answer 1 to Rule 24, in that the Carrier has set up a regular assignment in such a fashion as to secure an exemption from Question and Answer 1 of Rule 24, and the attempted annulment of Saturday violates "The Memorandum of Understanding Concerning Annulment of Runs". The Memorandum provides in part, as follows:

"It is hereby understood and agreed by and between The Pullman Company and its conductors represented by the Order of Railway Conductors and Brakemen, Pullman System, that Management shall not annul a run which is discontinued for any reason for only one day (24 hours).

If an assignment in a run or a run does not operate for any reason for only one day, the conductor shall be credited and paid held-for-service time as provided in Rule 9."

In support of its position, Petitioner has cited, among others, certain specific Awards. In Award 3758 (Swaim) cited by the Petitioner, the Statement of Claim includes the following: "Is work performed on a specified layover and should be paid for under the provisions of Rule 24." It certainly has no application to the facts in the instant case.

Award 7919, which Petitioner cites, deals with a holiday situation in a seasonal run scheduled, as here, to operate daily, except Saturdays with lay-overs at both home and away from home terminals, as in the instant case. No objection nor claim was offered in respect to this feature of that assignment. The sole issue in Award 7919 was the propriety of Carrier's additionally showing on the form that the assignment would not operate out of the "away-from-home" terminal on a holiday, Sunday, July 4th, requiring the regular conductor to layover thereat 24 hours in addition to the extra 24 hour Saturday lay-over.

What the Claimants were contending for in Award 7919 is reflected in the "Position of Employees" in employees' ex parte submission, as follows:

"Memorandum of Understanding Concerning Annulment of Runs. Prior to the Memorandum of Understanding Concerning Annulment of Runs, it was the established practice of the railroad industry not to operate various trains on certain legal holidays. As a result it was formerly the practice that a regularly assigned Conductor arriving at an away-from-home terminal just preceding such a holiday would be unable to return to his home terminal on schedule due to the non-operation of the train to which he was assigned for his inbound trip.

"As a result of the situation the Conductor was required to layover at the away-from-home terminal for an extra period of time (usually 24 hours) and was then assigned to make his return trip on a train normally assigned to some other Conductor."

* * * * *

"As a result of this practice the very feature which made an assignment a regular assignment, namely, its regularity, was destroyed."

Obviously, in order to annul or discontinue a regular assignment on a particular day, it must have been scheduled to operate that day. No rule requires the establishment of a run to operate every day when none of the trains comprising the run operates on Saturdays nor prohibits the establishment of a run to operate daily except Saturdays. No assignment in a run existed on Saturday inasmuch as the trains Nos. 3 and 4 were not scheduled to operate. This was not an "only one-day" occurrence within the meaning of the Memorandum but a situation which existed every Saturday throughout the seasonal operation. Clearly Award 7919 has no application to this situation. In Awards 10707, 10708, 10709 (Wilson) trains operated on Saturday when the forms said that they would not and hence, likewise, these awards cannot be applied to the facts in the instant case.

Lastly, Rule 24 is one requiring additional pay when conductors are used on layover or relief days. There is no violation of Rule 24 charged here. Question and Answer 1 is concerned with relationship of the Rule to Rule 15 and is directed, primarily, to an interpretation of Rule 24. Consequently, it does not have the standing of a separate rule insofar as the instant case is concerned. (See Award 5482—Donaldson)

Rule 15 was complied with by the Carrier in prescribing specific layovers for regular assignments; conductors were paid a basic month's wage of 205 hours for 175 hours of work performed in compliance with Rule 4; the positions were properly bulletined and a uniform reporting and release time was established in compliance with Rule 13; conductors had more than 96 hours off duty time in compliance with Rule 16.

The Operation of Conductors Form effective May 13 for Line 705 was in conformity with the Agreement and consistent with the practice thereunder.

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 there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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

DISSENT TO AWARD 10993, DOCKET PC 12232

Award 10993 is in error.

The basic issue in the dispute in Docket PC 12232 was whether or not the "Operation of Conductors Form" was properly set up to cover the daily except Saturday operation between Chicago and Duluth in accordance with the rules of the Agreement.

In Award 3758 we said:

"In question and answer 1 under Rule 24, it would seem that we have an interpretation by the parties which is binding on us in this case. Question 1 was, 'What is meant by 'specified layover or relief days?' The answer of the parties to this question was, 'The specified layover as prescribed by Rule 15 and as shown in Operation of Conductors, Form 93.126, that accrues to the immediately preceding trip made by a conductor in his assignment.'"

The majority in Award 10993 state:

"Question and Answer 1 is concerned with relationship of the Rule to Rule 15 and is directed, primarily, to an interpretation of Rule 24. Consequently, it does not have the standing of a separate rule insofar as the instant case is concerned."

The above statement is in error.

Both parties are fully aware that Question and Answer 1 to Rule 24 is applicable to all rules of the Agreement dealing with layovers. This statement is supported by Mr. F. J. Boeckelman, Carrier's witness before Emergency Board No. 89, in which he testified as follows:

"DR. SHARFMAN: I thought you said there were no provisions?

"THE WITNESS: There is no specific rule that refers to emergency lending of conductors, but we have a Question and Answer in Rule 38, which provides that a conductor can be dead-headed from one district to another with the understanding that he cannot be used until all available local extra conductors have been used.

"DR. SHARFMAN: Now, I think it is misleading to say that there is no present rule. **We have discovered throughout these**

hearings that some of your rules are contained in Questions and Answers, some of them are contained in examples and illustrations, and all the rest of it. If there is a specific Question and Answer which sets down the facts—

“THE WITNESS: That is right.

“DR. SHARFMAN: —that is just as much a rule as if it appeared up above.

“THE WITNESS: Probably that is an incorrect statement on our part, doctor, because the Question and Answer in the Agreement does specifically provide that conductors can be deadheaded from one district to another, but cannot be used until all available local extra conductors have been used.

“DR. SHARFMAN: That is Question and Answer what?

“THE WITNESS: I can give that to you in just a moment, sir. That is Question and Answer 7, on Page 36 of the present Agreement.

“DR. SHARFMAN: Page 36? I want to know the rule number.

“THE WITNESS: Rule 38.

“DR. SHARFMAN: Rule 38?

“THE WITNESS: Yes, sir.

“DR. SHARFMAN: All right. **You would agree, wouldn't you, that that is just as much a rule as if it were set up above in Rule 38?**

“THE WITNESS: That is correct, doctor. If it doesn't spell out the emergency lending of conductors, it certainly accomplishes that very purpose.

“DR. SHARFMAN: Whether it does or not is another question, but it states something in terms, and there it is carried out in the present rule.

“THE WITNESS: That is correct.

“DR. SHARFMAN: Okay.” (Emphasis ours.)

Rule 15 captioned **Layovers in Regular Assignment** provides as follows:

“Specific layovers shall be prescribed in operating schedules for regular assignments.”

The interpretation of a “specified layover”, as set forth in Rule 24, applies to all other rules in the Agreement in which the “specified layover” provisions are controlling. In other words, a “specified layover”, as interpreted in Rule 24, is applicable in Rules 9, 15, 31, 32, 33, 36 and 37 in the same manner as it is applicable in Rule 24; therefore, under the

provisions of Rule 9, the conductors involved in the instant case were held for service beyond their "specified layover" as prescribed in the Operation of Conductors Form prepared by the Carrier and which provided that the "specified layover" at Duluth would be 11 hours and 10 minutes.

The record is abundantly clear that the Carrier, in strict conformance with the provisions of Rule 15, prepared the "Operation of Conductors Form", showing that the "specified layover" at Duluth was 11 hours and 10 minutes. In order to defeat the purpose and intent of Rule 9 and the "Memorandum of Understanding Concerning Annulment of Runs", the Carrier placed the following notation on the reverse side of the Form:

"Line operates daily except Saturday with 3 men on 3½ man basis. One Conductor receives 24 hours additional relief after two round trips at Duluth and the other two Conductors receive 24 hours additional relief at Chicago."

The Board, in denying the claim of the employees, has, in effect, vitiated the clear provisions of Rule 9 and the "Memorandum of Understanding Concerning Annulment of Runs" as well as ignoring the provisions of Rules 20 and 21.

Rules 20 and 21 provide that: "Conductors in regular assignment shall be credited for a round trip the number of days there are conductors in the run, as covered by bulletin schedule". The notation that the three conductors on this assignment are paid on the basis of a 3½ man assignment can find no support for such an arrangement in **any** of the rules of the Agreement.

We are in agreement with the majority that the factual situations in Awards 3758, 7919, 10707, 10708 and 10709 were different than that confronting us here; however, in each of the Awards supra it was held that the notation placed on the back of the "Operation of Conductors Form" could not circumvent the rules of the Agreement, as the majority has condoned in the instant case.

In other words, the Carrier sought and has obtained from this Board a decision which has the effect of nullifying the held-for-service provisions of Rule 9 and the "Memorandum of Understanding Concerning Annulment of Runs".

In Award 8160 we held:

"... This Board is not authorized to revise Agreements by holding that clear mandates thereof may be ignored at the convenience of either party."

Award 10993 is in error, therefore I dissent.

**H. C. Kohler, Labor Member
Third Division, NRAB**

**REPLY TO DISSENT TO AWARD NO. 10993,
DOCKET NO. PC-12232**

The Labor Member's Dissent, supra, simply reiterates contentions which Award 10993 correctly rejects and which contentions are based upon

erroneous interpretations of the rules, Memorandum of Understanding, and particularly Question and Answer 1 under Rule 24.

Rule 15 simply requires management to prescribe specific layovers in operating schedules for regular assignments. Neither it nor any other rule, however, requires that layovers must be the same following each trip, either at the home terminal or the away from home terminal, or requires that conductor operations must be established to cover every day of the week. Accordingly, there was no violation of Rule 15 in preparing the Operation of Conductors Form to cover the daily except Saturday operation in this case, and Award 10993 correctly so holds.

Rule 24 is a pay rule and does not govern the preparation of Operation of Conductors forms; it simply provides additional pay when conductors are used on their layover or relief days. Question and Answer 1 thereunder likewise does not govern the preparation of Operation of Conductors forms, but only deals with specified layovers as prescribed in conformity with Rule 15. It is clear, therefore, that insofar as the instant case is concerned, Question and Answer 1, *supra*, does not have the standing of a separate rule, and Award 10993 correctly so holds.

Award 10993 correctly interprets the Agreement between the parties in holding that the Operation of Conductors Form in this case "was in conformity with the Agreement and consistent with the practice thereunder" and in denying the claim for held for service time under Rule 9.

/s/ **W. H. Castle**

/s/ **P. C. Carter**

/s/ **R. A. Carroll**

/s/ **D. S. Dugan**

/s/ **T. F. Strunck**