Award No. 11305

Docket No. PC-12205

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, 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 Conductors C. Bothman, J. G. Woods, A. W. Yonker, B. F. Mullins, K. R. Schroen, or their successors, of the St. Louis District, that The Pullman Company violated the rules of the Agreement between The Pullman Company and its Conductors, when:

1. Conductors C. Bothman, J. G. Woods, A. W. Yonker, B. F. Mullins, K. R. Schroen, or their successors, were required to relinquish supervisory and other duties properly performed only by these conductors, these duties being performed by other Pullman employes not possessing seniority rights to perform Pullman conductors' work.

2. This deprivation of work rights was in violation of Rule 64 (e) of the Agreement between The Pullman Company and its Conductors, effective September 21, 1957, and in further violation of Rule 25 of this Agreement.

3. This loss occurred as a result of the Operation of Conductors Form, 93.126, issued by The Pullman Company, St. Louis, Missouri, October 22, 1959, effective October 25, 1959, governing conductor operations on B&O trains 2 and 1 between St. Louis, Missouri and Baltimore, Maryland, designated as Line 2122.

4. Conductors C. Bothman, J. G. Woods, A. W. Yonker, B. F. Mullins, K. R. Schroen, be credited and paid under appropriate rules of the Agreement for all time so lost between the hours of 1:30 P. M. and 4:45 P. M. daily, from the effective date of the above order to the date these job rights are restored to these conductors.

5. Conductors C. Bothman, J. G. Woods, A. W. Yonker, B. F. Mullins, K. R. Schroen be credited and paid under Rule 24 for such work as they have been required to perform on such "relief days" as they have been deprived of as the result of the improper issuance of an Operation of Conductors Form, 93.126, effective October 25, 1959; and further, credited and paid held-for-service time as provided in Rule 9.

6. The extra conductors of the St. Louis District, a joint check of the record to be made to determine the extra conductor due each trip he was deprived of making on B&O trains 2 and 1 on such "relief days", be credited and paid for each such trip lost subsequent to October 25, 1959.

EMPLOYES' STATEMENT OF FACTS:

I.

Under date of October 22, 1959, The Pullman Company issued an Operation of Conductors Form (Form 93.126), with an effective date of October 25, 1959. This form covered the conductors' operation on B&O Trains Nos. 2 and 1 between St. Louis, Missouri and Baltimore, Maryland. For accounting purposes, this conductor run was designated as Line 2122.

This Operation of Conductors Form designated that the conductor report for Train No. 2 in St. Louis at 8:45 A. M., first day, released in Baltimore 9:00 A. M., second day. Elapsed time 23:15 hours, less 4 hours' relief enroute — time on duty 19:15 hours. For the inbound trip this form shows the conductor reported for Train No. 1 in Baltimore at 4:50 P. M., and was released in St. Louis, home terminal, 1:30 P. M., third day. Elapsed time 21:40 hours, less 4 hours' relief enroute — time on duty 17:40 hours. Total service hours for the round trip equals 36:55 hours.

This form also shows that there were 5 regularly-assigned conductors in this run. The conductors received an additional 24 hours' relief after 4 round trips. This form further shows that the average service hours per conductor, per month (30 days), was 210:55 hours. A copy of the Operation of Conductors Form, effective October 25, 1959, is submitted as Employes' Exhibit No. 1.

The conductors assigned to B&O Trains 2 and 1 arrived in St. Louis on Train No. 1 at 1:15 P. M., and were released at 1:30 P. M. To release the conductors at 1:30 P. M. was in violation of the rules of the Agreement between The Pullman Company and its Conductors, as interpreted by Third Division Award No. 6475 dated February 9, 1954. The Company released the conductors at 1:30 P. M. instead of holding them on duty, to perform conductor work, until 4:45 P. M. They would then have been released at 5:00 P. M. In other words, each regularly-assigned conductor was deprived of 3:30 hours' time per round trip.

By adding these 3:30 hours to the total service hours per round trip, as shown on the Operation of Conductors Form for October 25, 1959, that is, 36:55 service hours would equal 40:25 hours.

Five regularly-assigned conductors, with a relief of 24 hours after 4 round trips, is the equivalent to 5¼ conductors. 5¼ conductors, accumulating 40:25 hours per round trip, the average service hours per month (30 days), would be 230:55 hours.

II.

Rule 4 (c) reads as follows:

"Regular assignments shall not be scheduled to produce credited hours in excess of an average of 215 for a 30-day month."

tion has not assumed this responsibility. In Third Division Award 4011, the Board stated under **OPINION OF BOARD:**

> "The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance."

Also see Awards 5418, 5758, 3523, 3477 and 2577.

CONCLUSION

In this ex parte submission, the Company has shown that Conductors Bothman, Woods, et al., are not entitled to penalty payments under Rules 9 and 24 and that no payment is due extra conductors of the St. Louis District for relief trips. Also, the Company has shown that the Organization's arguments are unsound. Finally, the Company has shown that Awards of the National Railroad Adjustment Board support the Company in this dispute. Clearly, the Company's proffered adjustment of 3:15 hours daily to the conductor concerned is the only correct adjustment in this dispute.

The Organization's claim in behalf of Conductors Bothman, Woods, et al., should be denied in all respects except in the amount represented by the Company's proffer of adjustment.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employes or their representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective October 25, 1959 Carrier issued Operation of Conductors Form for its service on B&O Trains Nos. 2 and 1 operating between St. Louis and Baltimore. Under this form the conductor arriving in St. Louis on Train No. 1 from Baltimore at 1:15 P. M. was released from duty at 1:30 P. M. From the time of his release until 4:45 P. M. the cars which were to continue on to Ft. Worth and San Antonio were not in charge of a conductor. During that period, however, passengers were privileged to occupy their accommodations. On this Operation Form there were five (5) regularly assigned conductors on the St. Louis-Baltimore run. The conductors received an additional twenty-four hours relief after four round trips. On February 11, 1960 Carrier issued a new Operation of Conductors Form which provided that the conductors would remain on duty until they could turn over the cars to outgoing conductors. The present claim covers the period from October 25, 1959 to February 11, 1960.

The Petitioner contends that the Operation of Conductors Form of October 25, 1959, was in violation of the Agreement. Specifically it says that the regularly assigned conductors were thereby deprived of three hours and fifteen minutes work after their arrival in St. Louis at the end of each run contrary to the provisions of Rule 64(e) of the Agreement, which required that they be held on duty until 4:45 P. M. when another conductor reported for duty. Petitioner also alleges that because of the erroneous operating form, which did not provide for enough relief, the five regularly assigned conductors were required to work on days when they should have been on layover and were on layover when they should have been working. They ask that such conductors be paid under Rule 24 for work they were required to perform on days which should have been relief days and be paid under Rule 9 for days when they should have been working. Finally, Petitioner claims that the extra board

conductors should be credited and paid for relief trips to which they would have been entitled had the Carrier issued a proper Operation of Conductors Form.

Carrier replies that it has offered an adjustment of compensation for three hours and fifteen minutes daily to the conductors who were released from duty at 1:30 P. M. instead of 4:45 P. M. and that this is all the compensation to which the conductors are entitled. It maintains that the regularly assigned conductors are not entitled to any additional compensation under the provisions of Rules 9 and 24, and further that the extra conductors were not deprived of any relief trips by virtue of the alleged erroneous operating form.

Paragraphs (1)-(4) of the claim deal with the matter of compensation for the three hours and fifteen minutes work daily of which Carrier deprived the conductors by releasing them at 1:30 P. M. This part of the claim must be sustained. Claimants' right to this work was established by Awards 6475 and 9176 of this Board. Furthermore, Carrier, bowing to Award 9176, acknowledged Claimants' right to this compensation and offered to settle the claim on this basis.

Petitioner says that the improper assignment caused Claimants to work on days which should have been their relief days, and they should be paid for those days. Carrier says Claimants performed no service on their specified relief or layover days. While it is true that Claimants did not work on the layover days as set forth in the Operation Form, that Form failed to provide for sufficient relief periods under the rules of the Agreement and as a consequence, Claimants were required to work on days which would have been their relief days had a proper operation form been issued. Where, as here, Carrier's violation of the Agreement has caused Claimants to work on what should have been relief days Carrier is estopped to assert that under the Rule the Conductors performed no service on the relief days specified in the erroneous operating form. The principle announced in Award 3832, between the same parties, is applicable here. There the Board, having found a violation of the Agreement, said: "They [the Conductors] were required to work on the relief days that should have been provided for them and for which under Rule 24 they should have been compensated." We hold, therefore, that Claimants should be compensated for the relief days to which they were entitled and on which they were required to work. We find, however, that no conductors were "held at home station by direction of management beyond expiration of layover," and we reject that part of the claim in Paragraph (5) that charges a violation of Rule 9(a).

The basis of the claim in Paragraph (6) may be stated thus: If the Operation Form had been set up as Petitioner suggests in the Chart on pages 15 and 16 of the Record with an average of 5⅔ Conductors there would have been several additional relief days when extra conductors would have been needed in relief. From this Petitioner draws the conclusion that the extra Conductors were entitled to these days. This conclusion is based upon an erroneous premise. Petitioner's suggested form is hypothetical. Carrier was not required to set up a form using an average of 5⅔ Conductors. It was only required to comply with the Agreement. When Carrier issued a new Operation Form effective February 11, 1960, which provided for the regular conductors remaining on duty until 4:45 P. M. six (6) Conductors were used and no extra men were needed to provide the Conductors the relief required by the Agreement. Petitioner admits that the new form complies with the Agreement. Since Carrier could have complied with the Agreement by an Operation Form providing for something other than an average of 5⅔ Conductors with no work for extra

men, it follows that the extra men were not deprived of the claimed additional relief days by the erroneous form Carrier used. The part of the claim represented by Paragraph (6) must therefore be rejected.

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 violated to the extent indicated in the opinion.

AWARD

Claim sustained as to Paragraphs (1)-(4).

Claim sustained as to Paragraph (5) to the extent indicated in the opinion.

Claim denied as to Paragraph (6).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1963.

DISSENT TO AWARD NO. 11305,
DOCKET PC-12205

Award 11305 is in error in sustaining that part of Claim 5 covering payment under Rule 24, which rule imposes a penalty for road service performed by conductors on specified layover or relief days. The record is clear in that the claimants herein performed no service whatsoever on the specified layover or relief days assigned them by the Operation of Conductors form in effect during the period of the claim; consequently, Rule 24 was not applicable and Claim 5 should have been denied in its entirety.

For the foregoing reason, among others, Award 11305 is in error and we dissent.

W. H. Castle
P. C Carter
R. A. Carroll
D. S. Dugan
T. F. Strunck

LABOR MEMBER'S ANSWER TO
CARRIER MEMBERS' DISSENT TO AWARD 11305,
DOCKET PC 12205

The Dissenters fail to recognize that if the "Operation of Conductors Form" in effect during the period of this claim, had been issued in conformity

with the rules of the Agreement, their dissent would be justified, however, as correctly pointed out by the Majority,

> ". . . While it is true that Claimants did not work on the layover days as set forth in the Operation Form, that Form failed to provide for sufficient relief periods under the rules of the Agreement and as a consequence, Claimants were required to work on days which would have been their relief days had a proper operation form been issued."

If any error has been committed here, it is on the part of the Dissenters in their failure to properly analyze the evidence of record and apply the controlling principle in the light thereof.

Award 11305 therefore is correct and reaffirms the principle established in Award 3832.

H. C. Kohler
Labor Member

CARRIER MEMBERS' REPLY TO LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NO. 11305, DOCKET NO. PC-12205

In stating "Award 11305 therefore is correct", the Labor Member himself is partially correct but only insofar as the Award denied Claim 6 in its entirety, which requested a joint check of Carrier's records to determine the amount allegedly due unnamed extra conductors, and insofar as it denied that part of Claim 5 covering held-for-service time allegedly due under Rule 9. However, the Award is in error in sustaining that part of Claim 5 covering payment under Rule 24, for the same reason that it denied that part of Claim 5 covering payment under Rule 9, viz., that no conductors performed service on specified layover days, and for the same reason that it denied Claim 6 in its entirety, viz., that Carrier could have complied with the Agreement by an Operation Form without necessity for any work on additional layover days.

W. H. Castle
P. C. Carter
R. A. Carroll
D. S. Dugan
T. F. Strunck

Serial No. 201

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 11305

Docket No. PC-12205

Name of Organization:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

Name of Carrier:

THE PULLMAN COMPANY

Upon application of the representatives of the Employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The award sustained Paragraph 5 of the claim in the following words:

> ". . . we hold, therefore, that Claimants should be compensated for the relief days to which they were entitled and on which they were requested to work."

The question raised in the request for interpretation is whether Conductor McKenna can be considered a Claimant under Paragraph 5 of the claim.

Paragraph 5 asks that Conductors Bothman, Woods, Yonker, Mullins and Schroen be paid under Rule 24 for work they were required to perform on relief days of which they were wrongfully deprived by Carrier. Conductor McKenna is not named or in any way identified in this part of the claim. It will be noted that the word "successors" does not appear in this paragraph.

The Organization argues that since the opening paragraph (unnumbered) of the claim uses the word "successors" this makes McKenna a Claimant under Paragraph 5. The opening paragraph reads:

> "The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductors C. Bothman, J. G. Woods, A. W. Yonker, B. F. Mullins, K. R. Schroen, or their successors, of the St. Louis District, that The Pullman Company violated the rules of the Agreement between The Pullman Company and its Conductors, when:"

This is followed by six numbered paragraphs.

In this connection it should be pointed out that the claim as presented really involved three separate claims or issues. Paragraphs 1 to 4 deal with a violation of Rule 64 (e) and Paragraph 4 claims pay for time lost by the conductors when they were taken off of certain duties they were entitled to perform; Paragraph 5 is a claim for payment under Rule 24 for work the named conductors were required to perform on relief days to which they were entitled; Paragraph 6 is a claim on behalf of extra conductors for pay under Rule 24 for trips allegedly lost by Carrier's wrongful action. The award treated and disposed of the three claims as separate issues.

In our judgment the opening paragraph of the claim cannot be treated as applying to or covering all of the numbered paragraphs which follow because it obviously has no application whatever to Paragraph 6 where the claim is for the Extra Conductors. It would seem, therefore, that it applies only to numbered Paragraphs 1 to 4 and that the Organization is claiming for the five named conductors and their successors for the time lost when they were taken off duties between the hours of 1:30 and 4:45 P. M. This is logical because the word "successors" is again used in Paragraph 1 of this part of the claim whereas it is not used in Paragraph 5, which is a separate claim.

The Organization emphasizes that although Paragraph 4 of the first part of the claim does not include McKenna's name or the word successor, Carrier in its submission admits that McKenna was the successor to Yonker and a proper claimant under that part of the claim and that Carrier paid him accordingly. It argues that by the same token in Paragraph 5 where McKenna's name does not appear he is just as much a Claimant as in Paragraph 4.

While Carrier has by its payment to McKenna and in its submission recognized as a proper Claimant under Paragraph 4 though not named, it is not estopped to deny that he is a proper Claimant under the separate claim contained in Paragraph 5. Carrier's action may well have been based on the fact that in Paragraph 1 dealing with the violation of Rule 64 (e) the word "successors" was used, whereas the word does not appear in Paragraph 5 dealing with a different claim. In any event, merely because Carrier has treated McKenna as a Claimant in claim involved in Paragraphs 1 to 4 (Rule 64 (e) violation) does not authorize the Board to make an award to him for a separate violation where no claim is made for him.

While the record shows that McKenna was the successor to Yonker and in equity would be entitled to the same treatment, we cannot decide this issue on equity alone. If no claim is made on his behalf the Board cannot order that he be paid for the time involved. Unfortunately for Conductor McKenna, the **Organization has failed to allege that he worked on days which should have been his relief days and has failed to claim any credit or payment to him under Rule 24.** We hold, therefore, that McKenna is not a proper Claimant under the part of the claim in Paragraph 5.

Referee Roy R. Ray, who sat with the Division, as a member, when Award No. 11305 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of October 1963.

LABOR MEMBER'S DISSENT TO INTERPRETATION NO. 1 AWARD 11305, DOCKET PC 12205

The Majority is in grievous error, and, in effect, makes a new award in the guise of an interpretation, reaching a result wholly inconsistent with the factual situation as contained in the record in Award 11305.

The question posed for interpretation was whether or not Claimant McKenna was a proper claimant under Part 5 of the claim.

We cannot agree with the majority's opinion that ". . . the opening paragraph of the claim cannot be treated as applying to or covering all of the numbered paragraphs to follow. . . ."

The opening paragraph definitely makes claim for the named Conductors presently assigned to the run, **or their successors,** because of violation **of the rules** of the Agreement. The parts of the claim which are numbered set forth the three issues to be decided and the rules applying to each issue.

It is significant that under Part 4 Claimant McKenna was not named therein, nor was he named in Part 5.

The violation of the rules involved was the direct result of the improper issuance of the Operation of Conductor Form, therefore, the fact that there were three issues to be decided certainly was the only reason for the claim to be divided into six parts, but that fact should not deprive the Claimants—**or their successors,** as set forth in the opening paragraph of the claim, of the reparations to which they were entitled when the claim was sustained.

The Majority, as well as the Carrier, agree that Conductor McKenna succeeded Conductor Yonker in the assignment and was a proper Claimant under Part 4 of the Claim, but not under Part 5. Part 4 and Part 5 read as follows:

> "4. Conductors C. Bothman, J. G. Woods, A. W. Yonker, B. F. Mullins, K. R. Schroen, be credited and paid under appropriate rules of the Agreement for all time so lost between the hours of 1:30 P. M. and 4:45 P. M. daily, from the effective date of the above order to the date these job rights are restored to these conductors.
>
> 5. Conductors C. Bothman, J. G. Woods, A. W. Yonker, B. F. Mullins, K. R. Schroen be credited and paid under Rule 24 for such work as they have been required to perform on such 'relief days' as they have been deprived of as the result of the improper issuance of an Operation of Conductors Form, 93.126, effective October 25, 1959; and further, credited and paid held-for-service time as provided in Rule 9."

The Majority states:

> "Unfortunately for Conductor McKenna the **Organization has failed to allege that he worked on days which should have been his relief days and has failed to claim any credit or payment to him under Rule 24.**"

The above statement is contrary to the facts of record. The transcript of the hearing held on the property discloses, on pages 68 and 70 of the record,

that McKenna's name was listed as successor to Yonker effective on December 2, 1959 as the regularly assigned Conductor. In summing up his presentation in support of the Claim, Local Chairman Hardwick states: (R.P. 78)

> ". . . in the instant claim. . . . We are asking that the conductors be paid just as though the Company had complied with the Agreement. The Company did not issue a correct Operation of Conductors Form effective October 25, 1959, so it is clear that the conductors were not given the proper relief. Thus, it is clear that the regularly-assigned conductors were performing work on days they should have been on layover. At other times, such conductors were on layover on days they should have been working. . . ."

Thus, it is clearly evident that the Organization did claim credit and payment for Yonker as well as his successor, McKenna. Further, throughout the entire course of this dispute, the Carrier never denied, nor even questioned, the fact that McKenna was a claimant and therefore covered under both Part 4 and 5 of the Claim and it was improper for the Majority to consider a new issue. Decisions of this Board must be confined within the framework of the Railway Labor Act and Circular No. 1 to claims handled on the property, therefore, for this and other reasons cited, I dissent.

H. C. Kohler