

Award No. 11770

Docket No. PC-13848

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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 R. F. Coyer, Buffalo District, who was on temporary transfer to the Detroit District when, under date on June 30, 1962, he was in regular assignment, with an established layover until 5:25 P. M., July 1.

Conductor Coyer, while on established layover, was used in extra service on account of the extra board being exhausted. He performed the extra service, as instructed, and returned to Detroit and was released at 9:25 P. M., July 2.

We contend that Conductor Coyer, who had missed his regularly assigned trip of July 1, was entitled to held-for-service time under the provisions of Rule 9 after being released at 9:25 P. M., July 2, 1962, until he was again used in service, with a reporting time of 9:45 P. M., July 3.

We further contend that under the provisions of Rule 9 Conductor Coyer is entitled to 7:10 hours' held-for-service time. The position of the Employees is further supported by Question and Answer 4, and the Example thereto of the Vacation Agreement, found on page 110 of the current Agreement.

EMPLOYEES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of September 21, 1957, 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.

Conductor R. F. Coyer, who holds seniority in the Buffalo District, as provided in Rule 42 of the Agreement between The Pullman Company and its Conductors, was on temporary transfer from the Buffalo District to the Detroit District at the time this claim arose.

On June 30, 1962, Conductor Coyer was regularly assigned to C&O trains 46 and 47, for accounting purposes designated as Line 6292, between Detroit,

run prior to the expiration of his layover shall be compensated for such service as provided in Rule 24.

The conductor displaced shall be immediately notified of his displacement."

Thus, when Conductor Jankowski submitted his displacement form at 12:00 Noon on July 2, he immediately became a conductor regularly assigned to the specific assignment formerly held by Conductor Coyer in Line 6292. Under the Rule Conductor Coyer obviously could not have continued as regularly assigned to Line 6292, having been displaced therefrom. Upon his return to Detroit the night of July 2, Conductor Coyer could be classified only as an extra conductor, and he was not held for service. In fact, there was no other service for which he would be held at home stations. The records show that he was released from duty at 9:25 P. M., July 2. Thereafter, he was an extra conductor and was placed on the extra list to be awarded an assignment on July 3. In addition to the fact that Conductor Coyer was handled in precise accord with the rules of the Agreement, there is the additional fact that had Conductor Coyer made the trip of July 1, 1962, in Line 6292, he would have been credited with 3 days, or the equivalent 21:10 hours. For the extra service that he performed June 30 to July 2, he was credited with 36:45 hours. Thus, in dollars, Conductor Coyer received \$44.48 in excess of the amount he would have received if he had not been used in extra service. Certainly, on the basis of equity, Conductor Coyer's claim is without merit. Additionally, the claim is without merit under the provisions of the Agreement.

CONCLUSION: The Company has shown in this submission that neither Rule 9 nor any provision of the Vacation Agreement has been violated in the matter complained of. Further, the Company has shown that Conductor Coyer was handled on the dates in question in precise accord with the provisions of the Agreement with particular reference to Rule 37 of the Agreement.

The claim is without merit and should be denied.

All data presented herein in support of the Company's position have heretofore been presented in substance to the employee or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Conductor R. F. Coyer, after completing his regular run at 12:15 P. M. on June 30, 1962 was assigned by Carrier to emergency duty which he finished at 9:15 P. M. on July 2, 1962. He did not return from his extra service trip in time to go out on his regular assignment on July 1, 1962. While awaiting his next regular run due out July 4 at 5:25 P. M., after his return from tour of duty on July 2, he was again called up for an emergency assignment for which he reported on July 3 at 9:45 P. M. At 12:00 noon on July 2, 1962 Conductor Jankowski exercising his seniority made application to displace Conductor Coyer from his regular assignment scheduled for departure at 5:25 P. M., July 4, 1962.

Petitioner makes claim for held-for-service time for the period from July 2 at 9:15 P. M. to July 3 at 9:45 P. M., equivalent to seven hours and ten minutes. He argues that when he was released from duty on July 2 at 9:15 he had no established layover and was entitled to held-for-service time in accordance with Rule 9(a). It is his contention that Conductor Jankowski could not replace him until reporting time of the regular run which was 5:25

on July 4, and until that time he continued as a regularly assigned conductor with rights of an employe of this status.

Carrier takes the position that when on July 2 at 12:00 Noon Conductor Jankowski signified his intention to displace Claimant for the run scheduled July 4, the position became his immediately; therefore, Conductor Coyer whom he replaced was an extra on July 2 at 12:00 Noon and not eligible for held-for-service under Rules 9(a) and 22. It relies on Rule 37(b) which follows:

"A Conductor shall signify his intention of making a displacement to the designated official at least 2 hours prior to the reporting time of the assignment into which displacement is to be made. The intention of making a displacement shall be confirmed in writing.

A conductor who has signified his intention to displace into a specific assignment shall immediately be considered as assigned thereto and shall be permitted to enter the assignment within 2 hours before his layover or vacation expires. A conductor displacing into a run prior to the expiration of his layover shall be compensated for such service as provided in Rule 24.

A conductor displaced shall be immediately notified of his displacement."

The basic issue to be determined is at what time and date Claimant was displaced. Was it at 12:00 Noon on July 2 when Mr. Jankowski filed his application indicating his intention to displace petitioner, or was it at 5:45 P.M. on July 4, the time the next regular run was scheduled? Upon the answer to this question rests the decision as to whether Claimant is to be considered an extra or a regular.

We find that Conductor Coyer after his return from extra road service on July 2 had no established layover and, therefore, was entitled to held-for-service time under Rule 9(a). We do not accept Carrier's reasoning that Mr. Coyer's status was changed from a regular to an extra when Conductor Jankowski filed the "Application to Exercise Displacement Rights" on July 2 at 12:00 Noon. Since Mr. Jankowski was not scheduled for his regular run until July 4 at 5:25 P.M., after his layover had expired, and since his compensation did not begin until that date, the displacement could not take place until then. We do not find that Rule 37(b) upon which Carrier relies can be applied to change the status of a man while on road service. This rule serves the purpose of giving an employe with seniority an opportunity to designate his choice of assignment. When he chooses to displace another employe, he immediately signifies that he does not wish to be available as an extra conductor. In this way he has better control over the time he is to work.

Coyer was the regular conductor, not an extra, between July 2 and July 4. As such he was entitled to the rights of a regularly assigned conductor; and, therefore, there is merit to his claim for seven hours and ten minutes held-for-service time. We hold that Carrier violated the Agreement.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1963.

DISSENT TO AWARD NO. 11770, DOCKET NO. PC-13848

Award 11770 correctly states:

"The basic issue to be determined is at what time and date Claimant was displaced. Was it at 12:00 Noon on July 2 when Mr. Jankowski filed his application indicating his intention to displace petitioner, or was it at 5:45 P. M. on July 4, the time the next regular run was scheduled? * * * "

Award 11770 is in error, however, in resolving that question on the premise that the word "immediately" in the phrase "shall immediately be considered as assigned thereto", as contained in Rule 37 (b), means not until some later time or date, in the instant case not until 2 days and 5 hours 25 minutes (53 hours and 25 minutes) later, when the conductor's compensation begins in the specific assignment into which he has signified his intention to displace. If, as Award 11770 holds, a displacing conductor becomes ineligible, under this phrase, for further service as an extra man immediately upon signifying his intention to displace into a specific assignment, he at the same time must be considered as assigned thereto. Furthermore, the word "immediately" in this phrase can have no different meaning from that intended by use of the same word in the last sentence of Rule 37 (b) reading "A conductor displaced shall be immediately notified of his displacement."

Award 11770 also is in error, after admitting "that Conductor Coyer after his return from extra road service on July 2 had no established layover", in holding that, upon returning therefrom, he "was entitled to held-for-service time under Rule 9 (a)", which rule is specific in providing for allowance of such time only when held "beyond expiration of layover".

For the foregoing reasons, among others, we dissent.

/s/ W. H. Castle
/s/ D. S. Dugan
/s/ P. C. Carter
/s/ T. F. Strunck
/s/ G. C. White

**LABOR MEMBERS' ANSWER TO CARRIER MEMBERS' DISSENT TO
AWARD 11770, DOCKET PC-13848**

The Carrier Members 'dissent to Award No. 11770 is merely a repetition of their contentions during panel argument, such contentions being rejected by the Majority. Their contentions are no more persuasive now than they were then.

Award 11770 is correct and in accord with the facts of record and the governing rules of the Agreement between the parties.

/s/ H. C. Kohler