

Award No. 11997
Docket No. PC-13928

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, 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 regularly-assigned Conductor T. R. Dougherty, Philadelphia District, that the Pullman Company violated Rule 24 of the Agreement between The Pullman Company and its Conductors, in computing his time, when Conductor Dougherty was required to perform work on his specified relief days, on September 6, 7, 8, and 9, 1961.

We now ask that Conductor Dougherty's time be recomputed and paid for under the terms of Rule 24 for the work performed on his specified relief days.

Rules 6, 20, Question and Answer 1 to Rule 22, Rules 31, 15, 16, and 36 are also involved. Also, the Memorandum Agreement in Regard to Establishing Full Time Station Duty at Harrisburg, Pa., signed under date of April 11, 1961, is involved.

EMPLOYES' 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.

II.

Under date of April 11, 1961, the following Memorandum of Understanding was agreed to:

**"MEMORANDUM OF UNDERSTANDING IN REGARD TO
ESTABLISHING FULL-TIME STATION DUTY ASSIGN-
MENT AT HARRISBURG, PENNSYLVANIA, DESIG-
NATED AS LINE 2398**

CONCLUSION

The Company has shown in this ex parte submission that the claim in behalf of Conductor Dougherty is improperly before the Board inasmuch as it is a continuing claim that was filed subsequent to the time the Company corrected the matter complained of. Also, the Company has shown that Rule 24 is applicable only in situations involving road service performed by a conductor and, thus, is not applicable to a situation involving non-road service. Finally, other rules cited by the Organization are not shown to have been violated or applicable to the instant dispute.

The Organization's claim in behalf of Conductor Dougherty is improperly before the Board, and it should be held barred. Further, the claim is without merit and it should be denied.

All data presented 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: Before reaching the merits the Carrier states that the claim was not timely filed. Rule 51 of the Agreement provides that any claim of short payment for work performed shall be presented within 60 days from the date the conductor is notified of disallowed time. The claim covers work performed on September 6, 7, 8 and 9, 1961. The Carrier raises the issue of timely filing on the basis that 60 days from September 9 would expire on November 9 and since the claim was filed on November 28, 1961 this was more than 60 days after the occurrence of the incident with the result that the claim is barred.

The time sheet for the period from September 1 to 15 was turned in on September 15 for the first half of the month and the Claimant received payment for the first half on October 1, 1961. The rule is unambiguous and specific: "... any claim of short payment for work performed shall be presented within 60 days from the date the conductor is notified of disallowed time. The date of receipt of pay, October 1, 1961, was the date the conductor was first notified of disallowed time. Sixty days from October 1 does not expire until December 1, 1961. When the claim was filed on November 28 it was timely filed. The Carrier cites a number of well reasoned cases which hold that if a claim is not properly filed in the first instance it is barred. The citation of cases can be persuasive if the facts in said cases are analogous to the facts at issue. Such is clearly not the case in the instant matter. The cases cited by the Carrier are not apposite.

A full time Station Duty assignment was established at Harrisburg, Pennsylvania. The Claimant, Conductor T. E. Dougherty, was assigned to this job which provided that he work 26 days and then have 4 specified relief days. Claimant scheduled his 21 day vacation period to commence on July 12, 1961, the first day of the 26 day cycle for his assignment and ended on August 1, 1961, returning to work on August 2 in order to complete the 26 day cycle which ended on August 6, 1961. August 7, 8, 9 and 10 was the specified relief period, however the Carrier erroneously did not relieve the Claimant on August 7, 8, 9 and 10, but instead the Carrier erroneously considered him as commencing a new 26 day cycle on August 2, 1961. Actually August 2, 1961, was the 22nd day of the 26 day cycle as set forth in the Operation of Con-

ductors Form which began on July 12, 1961 and ended on August 6 with specified layover days on August 7, 8, 9 and 10.

The Organization filed claim for extra conductor W. J. Remy on October 2, 1961, alleging that the Carrier violated Rule 36 of the Agreement when it failed to assign Remy to the specified relief days on August 7, 8, 9 and 10. The claim in behalf of Remy was allowed. The following cycle, according to the schedule set forth in the "Operation of Conductors Form" commenced on August 11, 1961, the 26 days running up to and including September 5, 1961, with specified relief days September 6, 7, 8 and 9. The Carrier did not correct its error and Claimant was not relieved on September 6, 7, 8 and 9, the specified relief days of his assignment, therefore claim was filed for compensation under the terms of Rule 24 of the Agreement for the work performed on his specified relief days.

Petitioner claims that under the terms of the Memorandum of Understanding, Claimant was entitled to be compensated under the provisions of Rule 24 when he was required to perform service on his specified relief days on September 6, 7, 8, and 9. Carrier claims that the Agreement was not violated.

It appears that the Memorandum of Understanding establishing the full time assignment, which is the subject of the instant claim, had the effect of making all of the rules applicable to full time runs applicable to the instant case. When the assignment became effective on June 12, 1961, it was bulletined in accordance with Rule 31, in the same way as all runs are put up for bid. The Operation of Conductors Form shows that one conductor was regularly assigned and he worked 26 consecutive days, then had the next 4 days off as required by Rules 15 and 16. He was paid his basic monthly rate of pay when completing his monthly assignment as required by Rule 20. It would seem that Rule 24 was in full force and effect contrary to the Carrier's position that Rule 24 applies only to a conductor performing road service. It would further seem that the Memorandum Agreement had the purpose of permitting the establishment of the daily station assignment in the same category as a road assignment and governed by all the rules applicable to road assignments otherwise it would have been necessary to fill the assignment each day from the extra board. The Claimant should have received his relief days on September 6, 7, 8 and 9. He worked on those days and therefore should be compensated for work performed on those days.

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 Carrier violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1963.

DISSENT TO AWARD NO. 11997, DOCKET NO. PC-13928

Award 11997 is in error in concluding, among other things, as follows:

"It appears that the Memorandum of Understanding establishing the full time assignment, which is the subject of the instant claim, had the effect of making all of the rules applicable to full time runs applicable to the instant case. * * * It would seem that Rule 24 was in full force and effect contrary to the Carrier's position that Rule 24 applies only to a conductor performing road service. It would further seem that the Memorandum Agreement had the purpose of permitting the establishment of the daily station assignment in the same category as a road assignment and governed by all the rules applicable to road assignments * * *."

The Memorandum, supra, is clear in providing:

"* * * that an exception to the rules is made in establishing a full-time station duty assignment at Harrisburg, Pennsylvania, designated as Line 2398.

"* * *."

It also is clear from the Memorandum, supra, that the parties, in establishing this full-time station duty assignment, made it subject only to Rules 25 and 31 in connection with bulletining and filling same, and to Rule 16 in connection with providing relief days, except that relief days are required to be filled "as provided in the rules of the agreement". In no other respects are any agreement rules applicable to this station duty assignment, and this Division is without authority to add thereto; our authority is limited to interpreting this Memorandum of Understanding and the Agreement as written by the parties.

In sustaining the instant claim for pay under the terms of Rule 24, Award 11997 places meanings on the Memorandum, supra, and on Rule 24, other than is clearly and unambiguously expressed therein, which is contrary to this Board's proper function. In Award 7718 (Cluster) we held:

"* * * In order to sustain the claim, we would have to place a meaning upon the language of Sections 2 (a) and (b) other than that which is clearly and unambiguously expressed therein. According to many awards of this Division, this would be contrary to our proper function, which is to apply the rules as they have been written by

the parties and not to look beyond the language of a rule when it is plainly and unambiguously expressed."

Rule 24, by specific language, is applicable solely to "road service performed by conductors on specified layover or relief days". Station duty is not road service; it involves no runs over the road and away from the home station, but is non-road service performed at one specific station.

Furthermore, the last paragraph of the Memorandum, supra, specifically disassociates "this full-time station duty assignment" from "any road service assignment". Consequently, it was ludicrous for the Majority in Award 11997 to construe the Memorandum as either having "had the effect of making all of the rules applicable to the instant case" or having "had the purpose of permitting the establishment of the daily station assignment in the same category as a road assignment and governed by all the rules applicable to road service assignments". Obviously, bulletining the assignment under Rule 31, as specifically required by the Memorandum, supra, did not operate to change the status of this full-time station duty assignment to road service.

Petitioner itself admitted as follows:

"From the Memorandum of Understanding, shown on page 2 of this statement, executed on April 11, 1961, it will be noted that an exception to the rules is made in establishing this full-time station duty assignment."

If the parties had intended to make this special station duty assignment subject to all rules of the Agreement, obviously they would not have made it an exception thereto. If the parties had intended to make Rule 24 or any other rule of the Agreement applicable to this assignment they "could have specified by so stating" (Award 10714) the same as they did in respect of Rules 16, 25 and 31. But since the parties made Rules 16, 25 and 31 applicable, this is an indication that no other rules were contemplated to apply (Award 6655).

For the foregoing reasons we dissent.

W. H. Castle
D. S. Dugan
P. C. Carter
T. F. Strunk
G. C. White

**LABOR MEMBER'S ANSWER TO
CARRIER MEMBERS' DISSENT TO AWARD 11997
DOCKET NO. PC 13928**

The Carrier Members' dissent merely repeats what was said in the record and in panel discussion. It is no more persuasive now than it was then.

Eliminating all irrelevant and repetitious statements and arguments in this case, the substantial issue to be decided was clear-cut and simply boiled down to the proposition of whether or not Rule 24 was controlling for additional payment to the claimant when he was required to work on his four relief

days, which, as admitted by the Carrier, accrued to him on September 6, 7, 8, and 9.

The Memorandum of Understanding referred to, establishing the full time assignment here involved, had the undisputed effect of making all rules applicable to full time runs, applicable in the instant case.

For example,

Rule 31 — Bulletining of Runs

Rule 15 — Layovers in Regular assignment

Rule 16 — Days off Duty

Rule 20 — Regular Assignments — Full Time

Rule 24 — Additional pay when used on Layover or Relief Days.

When the assignment became effective on June 12, 1961, it was bulletined in accordance with Rule 31, the same as all runs are put up for bid. The Operation of Conductors Form provided that one Conductor was regularly assigned and he worked 26 consecutive days, then had the next four days off as required by Rules 15 and 16. He was paid his basic monthly rate of pay when completing his monthly assignment as required by Rule 20.

Rule 24 likewise was in full force and effect under the circumstances, contrary to the Dissenters' argumentation that Rule 24 applied only to a conductor performing road service. Obviously, the purpose of the Memorandum of Understanding was to permit establishment of the daily station duty assignment in the same category as a road assignment, governed by all rules applicable to road assignments, otherwise it would have been necessary to fill the assignment each day from the extra board.

Finally, in the light of Carrier's admission that Claimant should have received his additional relief on September 6, 7, 8 and 9, Award 11997 properly disposes of the dispute in accordance with the pertinent facts of record and governing rules.

H. C. Kohler, Labor Member