

Award No. 14005

Docket No. PC-15484

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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 F. W. Mack, Chicago District, that the rules of the Agreement were violated, with especial reference to Rules 9 and 11, when:

Conductor Mack was scheduled to report for his regular assignment at 7:45 A. M., July 17, as shown on his time sheet, but was held in Chicago until 7:45 A. M., July 19, at which time he was instructed to report in Chicago for witness service.

Conductor Mack was released in Chicago at 5:50 P. M., July 24, from witness service, and was again held in Chicago until 7:45 A. M., July 27, when he was scheduled to report for his regular assignment.

Conductor Mack has shown on his time sheet 66:00 hours for held-for-service time and witness duty. The Company has allowed him 60 hours. In other words, the Company apparently is contending that he was on witness duty while he was being held in Chicago prior to the time he was to begin witness service. We claim this is contrary to the rules of the Agreement, especially Rules 9 and 11.

We now ask that Conductor Mack be credited and paid for the additional 6:00 hours as claimed by him.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date of September 21, 1957, revised January 1, 1964, 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.

I.

Prior to July 17, 1964, Conductor F. W. Mack, Chicago District, was regularly assigned to the conductor run on IC Train 53 CofG 52 ACL 15-1-5-SAL 5-1 outbound, and SAL 2-6-ACL 2-6-14-CofG 53, IC 52 inbound, between Chicago, Illinois and Miami, Florida.

leaving the latter to operate in the field not covered by the former. One of the cornerstone awards that may be considered significant in the instant dispute is Third Division denial Award 5220 (Wenke), in which the Organization argued, as in the instant case, that the specific Rule relating to witness duty (WITNESS 39) was not controlling and that an employee on witness duty should be compensated additionally under Rule 35, TRAVEL NOT IN CAMP CARS. In denying the claim that additional payment was due the employee under Rule 35, the Board stated, under OPINION OF BOARD, that Rule 39 related specifically to employees on witness duty, which Rule provided what the employees were to receive when required by carrier to attend court as witnesses and that the Rule would have to be changed before payment other than that agreed upon by the parties could be allowed.

In the hearing accorded the Organization on the claim in behalf of Conductor Mack, the representative of Management recited for the record an example of the consistent application by the Company of Rule 11 in cases similar to that of Conductor Mack. In the example, Cincinnati Conductor E. C. Carroll, a regular conductor in Line 3198, Cincinnati-Nashville, completed a round trip in his regular assignment on November 7, 1963, and was next due out at 8:15 A. M., November 9. Because he was required in Louisville to appear as a witness on November 11, he was sent to Louisville by train, leaving Cincinnati the morning of November 9 and returned to Cincinnati immediately following the November 11 hearing. He was deprived of one complete round trip in the line which at that time paid 16:50 hours. However, inasmuch as he was absent from his run for three consecutive 24-hour periods the Company paid him 20:30 hours or 6:50 hours for each of these three 24-hour periods. Neither Conductor Carroll nor the Organization claimed the conductor was entitled to pay as held-for-service under Rule 9 for the time following his return to Cincinnati to the time he reported for his next trip at 8:15 A. M., November 12 (Exhibit A. pp. 9-10).

CONCLUSION

In this ex parte submission, the Company has shown that Conductor Mack properly was placed in witness duty on July 17, 1964, and properly paid for such service as provided in Rule 11, the controlling rule in this dispute. Also, the Company has shown that Conductor Mack was not subject to the provisions of Rule 9, Held for Service, during the period 7:45 A. M., July 17 to 7:45 A. M., July 27, during which 10-day period he was performing witness duty service in accordance with the provisions of Rule 11, Witness Duty. Finally, the Company has shown that awards of the National Railroad Adjustment Board support the Company in this dispute.

The Organization's claim that Conductor Mack is entitled to an additional 6:00 hours credit and pay is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The evidence of record does not support the Organization's position.

Rule 11 of the Agreement between the parties is a special rule, designed to afford the Carrier the right to make a conductor available for witness service and to compensate him for such service at the rate of one day for each 24-hour period, or fraction thereof, that he is required to be available.

Claimant was correctly compensated for ten (10) days (60 hours) for the period 7:45 A. M., July 17, 1964 to 7:45 A. M., July 27, 1964, in accordance with the provisions of Rule 11.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1965.