

Award No. 14266
Docket No. PC-15412

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, 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. V. Houser, Chicago District, that:

1. A recheck of Conductor Houser's time be made for the pay period ending June 30, 1964, with especial reference to the deadhead trip International Falls to Chicago under date of June 25-26, 1964.

From Conductor Houser's time sheet it will be noted that the Company has allowed 9:00 hours for the deadhead trip from International Falls to Chicago. We contend that since Conductor Houser was not furnished with berth accommodations, as provided in Paragraph (b) of Rule 7 on this trip that his time has been incorrectly computed.

2. We now ask that Conductor Houser's time for the trip in question be paid in accordance with Paragraph (b) of Rule 7, and that he be paid an additional 13:10 hours.

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.

During the established signout period, on June 23, 1964, extra Conductor F. V. Houser, Chicago District, was given an assignment to report in Chicago at 3:30 P. M., June 24, for extra service on CB&Q Train 23 from Chicago, Ill., to International Falls, Minn.

Conductor Houser arrived International Falls at 10:20 A. M., June 25, and was released 10 minutes later, or at 10:30 A. M. He was next instructed to

In letter dated November 24, 1964, General Chairman Wise requested conference with the Company's Appeals Officer in connection with the claim in behalf of Conductor Houser (Exhibit C).

The Appeals Officer rendered his denial decision on January 4, 1965, in which he stated that he found that Hines (Houser) was correctly paid for the period in question (Exhibit D).

On January 5, 1965, General Chairman Wise wrote the Appeals Officer and advised him that his decision was not satisfactory and further that he had noted the error in which the Claimant was referred to as Mr. Hines when Mr. Houser was meant (Exhibit E).

Under date of February 18, 1965, the Organization progressed the claim in behalf of Conductor Houser to the Third Division, National Railroad Adjustment Board (Exhibit F).

(Exhibits not reproduced.)

OPINION OF BOARD: The first assignment Claimant received in this case, was to perform extra road service from Chicago to International Falls and then to deadhead to St. Paul. This assignment was accomplished when Claimant performed extra road service on June 24, 1964, departing Chicago 3:30 P. M. and arriving International Falls where he was released at 10:30 A. M., June 25, 1964. He departed International Falls 4:50 P. M., June 25, 1964 and arrived and was released at St. Paul at 4:05 A. M., June 26, 1964.

Claimant remained in St. Paul from 4:05 A. M. until 7:55 A. M., June 26, 1964, at which time he was assigned to deadhead to Chicago, where he arrived and was released at 3:00 P. M., June 26, 1964.

The Carrier coupled all deadhead service, treating it as one movement, and compensated Claimant for 9 hours, invoking the provisions of Rule 7(a), Q-1 and A-1.

The Organization urges that the deadhead service must be computed by applying all of Rule 7 to the situation and, in particular, cites the provisions of Rule 7(b), Q-2 and A-2.

Perhaps it would be best to state the questions involved in this claim by reproducing the statements in the submissions which purport to place the issues before the Board.

Page four of the ex parte submission presented by the Employees says in part:

"The issue in this dispute is — should the time for the deadhead trip of Conductor Houser, reporting in International Falls at 4:50 P. M., June 25, released in Chicago at 3:00 P. M., June 26, be computed under the provisions of Rule 7 (b), as claimed by the Organization, or should Conductor Houser's time be computed by the Company?"

The Carrier presents basically the same question in the ex parte statement presented in behalf of its position:

"The issue in this dispute is whether the Company credited and paid Conductor Houser correctly for the two deadhead trips he performed between International Falls and Chicago, June 25-26, 1964.

The Organization alleges that Conductor Houser's credit and pay for the deadhead trip International Falls to Chicago must be computed under the provisions of Rule 7 (b) and that the conductor must be paid an additional 13:10 hours.

On the other hand, the Company maintains that Rule 7 (b) is not applicable to this dispute and that Conductor Houser was properly credited and paid under Rule 7 (a) and Question and Answer 1 thereof.

The rule pertinent to this dispute is set down herein for the convenience of the Board, as follows:

'RULE 7.

DEADHEAD SERVICE

(a) Conductor deadheading on passes or cars on Company business (except in connection with witness service) shall be allowed credit for actual time up to 9:00 hours for each 24-hour period from time required to report until released, except as provided in paragraph (b) of this Rule and in Rule 23.

(b) When berth accommodation in a Pullman car is not furnished a conductor deadheading, on pass or car, on an overnight trip on Company business (except in connection with witness service) the conductor shall be allowed credit for actual time of the trip from time required to report at the uniform reporting time until released at uniform release time, with a minimum credit of 6:00 hours.

(c) Q 1. Shall different trips deadheading on passes or equipment within a 24-hour period be coupled together and treated as one movement?

A 1. Yes, provided both trips are completed within a 24-hour period and no other class of service has intervened.

Q 2. What is meant by an overnight trip?

A 2. Any operation where the spread of the trip includes the hours from 12 midnight to 6 A. M.'"

The Carrier first moves to dismiss this case on the authority of Awards 13828 and 13491.

This is admittedly a case of first impression. Carrier argues that we must base our opinions regarding cases of first impression on history and past practice, as they serve to establish the intention of the parties to the agreement, when the rule involved is ambiguous. They urge that when such evidence, as required above, is not presented, we are prevented from substituting "our judgment, logic, or arbitrary reaction," for such evidence.

The motion is denied.

We are of the opinion that it is the function of this Board to interpret the rules of these agreements, whether it is for the first time or the fifty-first time.

We welcome all evidence of intent, history, past practice and whatever else seems appropriate at the time. But because one or all of these elements may be missing, we do not believe we lack jurisdiction to decide the case at bar.

In considering the merits of this case, it is important to keep in mind that we are actually concerned with two deadhead trips. One trip is International Falls to St. Paul and the second is St. Paul to Chicago. This is not to be considered as a single deadhead assignment from International Falls to Chicago.

Rule 7 (a) as amplified by Q-1 and A-1 allows the Carrier to couple deadhead time within a 24-hour period for purposes of executing the 9 hour maximum, where no other class of service intervenes. Rule 7 (b) as amplified by Q-2 and A-2 provides an exception to Rule 7 (a) and Q-1 and A-1, where an operation includes the hours 12 Midnight to 6 A. M. and no berth accommodations are provided for the deadheading conductor.

In order for the Organization to prevail in this claim, it would have to prove that Claimant was deadheading without berth accommodations from Midnight to 6 A. M. The evidence is that Claimant released himself, under the rules, at 4:05 A. M., June 26, 1964, and did not report again for the second deadhead assignment until 7:55 A. M., that same day.

We therefore hold that Claimant was not engaged in an overnight trip as contemplated by the rules in order to allow 7 (b) to modify 7 (a), and therefore, the claim will be denied.

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 24th day of March 1966.

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