

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "The question involved is on pay for services rendered. Conductor J. R. Deckard, Philadelphia District, left Philadelphia at 5:30 P. M., January 25, 1937, in charge of four deadhead cars, arriving Wilmington at 8:00 P. M. He performed station duty until 11:50 A. M., the 26th, when he returned to Philadelphia on pass, arriving at 12:40 P. M., same day. He was paid continuous time for this service. He claims a minimum day for the road service and 13 hours, 50 minutes, for the station duty. The difference is in the pay allowed for road service amounting to 4 hours, 40 minutes, as computed under Rule 22."

EMPLOYEES' STATEMENT OF FACTS: "This grievance has been presented under the rules of the Agreement between The Pullman Company and Conductors in the service of The Pullman Company. Decision of the highest officer designated for that purpose is shown in Exhibit 'A.' Rule 10, Exhibit 'B,' and Rule 23, Exhibit 'C,' are involved in this case.

"Conductor Deckard left Philadelphia January 25, 5:30 P. M., with deadhead cars and arrived at Wilmington 8:00 P. M. same day. He was instructed to see that these cars were in proper condition for service out of that station. Two cars were to leave on different trains and must be manned by porters equipped to run in charge, that is, without a conductor. He was told that a third train would take the remaining two cars, with him in charge. Keeping in touch with the station-master for these train movements and making certain that the cars were properly manned and dispatched kept Conductor Deckard on duty all night. The next morning the two cars to be handled by porters were attached to the proper trains and left. The station-master then told Deckard that the two remaining cars which he was to handle would not be used and he should return to Philadelphia. Instructions were received for this return movement which was made on a pass. He left Wilmington at 11:50 A. M. and arrived Philadelphia 12:40 P. M. January 26th. He was originally paid for 2 hours, 30 minutes, DH on cars; 13 hours, 50 minutes station duty, and 50 minutes DH on pass.

"As the result of a request for a re-check of his pay, the Management said he should have been paid for 8 hours held for service instead of 13 hours, 50 minutes, station duty, and deducted \$4.69 from his next pay check. A little later this deduction was returned. He was then told that he had been paid at his hourly rate for all the hours credited on Jan. 25th-26th, which totalled 16 hours, 10 minutes. He refused to accept this as full payment, claiming that he was entitled to the minimum of 8 hours pay under Rule 23, Exhibit 'C,' for the road service to and from Wilmington, and 13 hours, 50 minutes pay for the station duty at Wilmington."

OPINION OF BOARD: There is in evidence an agreement between the parties dated Dec. 1, 1936. The employees cite Rules 10 and 23 in that agreement as the rules involved in this case.

Rule 10 reads as follows:

"STATION DUTY. When required to perform station duty, load trains, or when called and reporting for road service and not used, such time shall be credited on the hourly basis and paid for in addition to all other earnings for the month, with minimum credit of three (3) hours for each call. Conductors, within the spread of their assignment, may be required to lift transportation for cars other than those they will handle on the road without additional credit or pay, but their responsibility therefor shall cease when released from receiving service."

Rule 23 reads as follows:

"EIGHT-HOUR MINIMUM PAYMENTS. Conductors in irregular service performing less than eight (8) hours' road service (including held for service) within a 24-hour period from reporting time at home terminal, shall receive a credit for actual hours worked and minimum of eight (8) hours' pay.

Example: A conductor performs the following service within a 24-hour period: Special service, leaving Philadelphia 7 A. M., arriving Atlantic City 9 A. M. Held for service at Atlantic City 1 P. M. to 4 P. M. Special service leaving Atlantic City at 4 P. M., arriving Philadelphia 6 P. M., making a total of 7 credited hours. Since no other service is performed in the 24-hour period, he shall be credited with 7 hours' service and paid for 8 hours."

The carrier cites Rules 6, 7, and 22 as the governing rules; they are quoted immediately preceding this opinion.

Under these rules the first point for determination is whether the service performed at Wilmington (after return to duty) was road service or non-road service. If it was road service the organization concedes that it would be proper to pay on a basis of continuous time as was done and that that would be the end of the controversy. However, the organization strenuously denies that it was road service.

It is recognized that road service and non-road service may not be coupled on a basis of continuous time but the carrier contends that even though the service at Wilmington was non-road service that under Rules 6, 7, and 22 all the claimant would be entitled to for the deadheading from and to Philadelphia would be straight time. As to this, the claimant insists that under Rules 7 and 23 he would be entitled to 8 hours' minimum. Claimant was paid the actual hourage at Wilmington (minus time released) which is what he would have been paid whether it was road service or non-road service; but he was paid only actual time for the deadheading to and from Wilmington as against claim for an 8 hour minimum.

The carrier likens the service performed at Wilmington to that contemplated under Rule 6 and second portion of Rule 10, such as the time a conductor spends in preparation for his trip, in receiving passengers, and loading cars as well as his final terminal time, including the depositing of earnings and diagrams with receiving cashier, all of which are considered a part of the road service and not to be separated therefrom; but it is obvious that no preparatory or release time attaches to movements deadheading with cars or on pass. The carrier further likens the situation at Wilmington to delay en route; but a cursory examination of the carrier's own statement of facts shows that the assignment of duty at Wilmington was in no respect similar to that contemplated by Rule 6 or the second portion of Rule 10. Generally speaking, preparatory or terminal time relates to duties in connection with

one's own assignment; on the other hand, station duties more commonly are not so related. Here, at least, the duties, so far as the two cars which were to go forward porter-in-charge, were from the outset not in contemplation of duties in connection with the conductor's own assignment even had the two cars it was anticipated he should take out have gone forward. It is hard to see how a clearer example of station duties could be imagined than those to which the conductor was assigned in this instance. From this it follows that it must be held that the service at Wilmington was non-road service.

The next inquiry then is as to application of Rules 7, 22, and 23. Better to understand their application it will be observed that Rules 6 to 12 cover "Credits for Hours Worked," while Rules 20 to 24 cover "Basis of Payment." Rule 12 covers "Payment for Hours Credited" and provides that "all hours credited shall be paid for in accordance with the rules covering 'Basis of Payment.'" The purpose of the distinction is this: Under the rules covering basis of payment certain minima are provided for so far as payment is concerned. On the other hand, however, in computing the 240 hours upon which the monthly payment rate is based, and on overtime computation, only hours credited are used, not including the minima for which certain services may be paid. Accordingly, even if there were a conflict between the two, the "Basis of Pay" would govern for a particular service, but it is not considered that there is conflict between Rules 7 and 23. Rule 7 provides for credit allowance while deadheading of actual time up to 12 hours within a 24-hour period and with a minimum of 8 hours where overnight trips are involved. Rule 23 provides for a minimum of 8 hours' road service to conductors in irregular service within a 24 hour period. The only theory upon which a conflict could be supposed is that the trips from and to Philadelphia should be regarded as separate trips. Under such an interpretation, under Rule 23 they would call for two minimum days of 8 hours; but the clear intent of Rule 7 appears to be the same as that of Rule 23, that is, to treat the round trip within 24 hours as the service and each of the rules contemplates a minimum of 8 hours for it.

The Board accordingly finds that the claimant was entitled to be paid 8 hours' road service from and to Philadelphia instead of the 3 hours and 20 minutes paid by the carrier; that is, he is entitled to 4 hours and 40 minutes additional.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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

On the evidence the claimant is entitled to 4 hours and 40 minutes additional time.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1938.