

**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: "Conductor Allen was paid \$189.18 for the month of November, 1936. He shows hourly credits totalling 242 hours, 45 minutes, all in regular assignment. These credits entitle him to \$195.21. He asks pay for the difference, amounting to \$6.03."

EMPLOYEES' STATEMENT OF FACTS: "This grievance has been presented under 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 20, under which this grievance is presented, is shown in Exhibit 'B.' Conductor Allen is regularly assigned to lines 2291-2371. He was in service in his regular assignment during the entire month. On November 2nd, he reported for his trip in line 2371, Roanoke to Bluefield, but owing to late trains this line was not operated to Bluefield that day. This is a daylight trip, the conductor reporting at 8:35 A. M., being released at 12:40 P. M. Total elapsed time 4 hours, 5 minutes. He continued in his regular assignment the same evening, reporting at 6:05 P. M., going from Roanoke straight to Hagerstown instead of going to Hagerstown by way of Bluefield, as he would have done if he had left Roanoke that morning. His time was therefore covered on November 2nd by earned layover from midnight to 8:35 A. M., and by regular trip from 6:05 P. M. to midnight, a total of 14 hours, 30 minutes. Because the time from 8:35 A. M. to 6:05 P. M. (9 hours, 30 minutes) was not covered by road service credits, the Management deducted one day from the conductor's pay for the month. The conductor entered 8 hours, 5 minutes, on his time sheet as held for service to cover this dead time but this credit was not allowed. He was given 3 hours for reporting for the trip instead."

POSITION OF EMPLOYEES: "This conductor, being regularly assigned, is entitled to his monthly wage of \$193.00 on completion of his monthly assignment, whether 240 hours or less. He completed his monthly assignment by making every scheduled trip required. He did not lay off. He was not required to make one trip on November 2nd from Roanoke to Bluefield (4 hours, 5 minutes) because the train carrying his line missed connections, but he did have his time covered on that day to the extent of 14 hours, 30 minutes—8 hours, 35 minutes being for earned lay over and 5 hours, 55 minutes, being for road service. Had this trip from Roanoke to Bluefield been made according to schedule on November 2nd and Conductor Allen had laid off, then a deduction would have been proper because another conductor would have taken his place. As it was, however, Conductor Allen reported for his run but was held off for reasons already made clear. Rule 9, Exhibit 'C,' provides that when a conductor is held at home station beyond the expiration of his layover by direction of the Management, he will be allowed held

same as for any other trip, but for the purpose only of calculating the hours in excess of an average of 8 per day the service hours shall be applied proportionately to each month; for instance, a conductor in line 238, an assignment requiring 12 men and carrying hourage credit of 93 hours. (46'35" westbound and 46'25" eastbound) equal to an average of 7'45" per day, in making trip on the following schedule—

Report	Chicago	9:00 P. M.	June 27
Released	Los Ang.	8:35 A. M.	June 30
Report	Los Ang.	6:00 P. M.	July 1
Released	Chicago	9:25 A. M.	July 4

would be paid for 3 days in June and 9 days in July, but in applying this rule would receive credit of 23'15" (3 x 7'45") in June, and 69'45" (9 x 7'45") in July.

Assuming that such conductor's service for June was—

Regular line service, including	Days	Hour Credits
5 hours late arrival time, prior to departure in line 238.....	20	165'
In line 238	3	23'15"
Total	23	188'15"

he would be paid for 23 days and 4'15" excess.

Likewise for calculating purposes, hourage credit of 69'45" will be applied to the 9 days paid for in July.

"Q-2. In the example cited in Answer No. 1 the conductor actually performed 46'35" service in line 238 in June. In the event he had accumulated 220 hours in other service during the month, what would he be allowed for the month?

"A-2. Conductor would have accumulated 266'35" hourage credit and would be paid a full month's wage and 26'35" excess.

"**Example No. 1:** A regular assigned conductor in an assignment consisting of seven conductors, lays off one round trip in a 31-day month. An extra conductor takes his place for that trip. The regular conductor having laid off one round trip only during the month will be paid 24/31 of his monthly wage. The extra conductor making the one round trip will be paid 7/31 of his monthly wage. The rule being that where portions of a month are worked, the number of days worked shall be used as the numerator and the number of days in the month as the denominator."

* * * * *

OPINION OF BOARD: It is unnecessary to repeat in this opinion the facts or the rule involved which have previously been stated by the parties. There is no dispute concerning the facts. The organization relies on Rule 9, the Held for Service rule, in claiming the time between time the conductor reported for the first leg of his trip and the time he reported for the second leg. The carrier claims that under Rule 21 a conductor performing less than a round trip shall be paid for proportionately. Further, that in the absence of any guarantee to the conductor or any specific prohibition it can at any time annul without notice or bulletin, any part of a regular assignment and pay only for the performance of the remainder.

In the view taken by the Board the organization's claim is not dependable upon whether the time involved may be classified as held for service under Rule 9. The Board disagrees with the carrier's contention that it is at liberty to blank any part of a regular assignment at any time without bulletining

and pay only for the remainder. The provision for proportionate payment of less than a round trip is obviously intended to cover failure on the part of the conductor to perform. To subscribe to the carrier's contention would be entirely destructive of the whole theory of the bulletin rules. They contemplate the advertisement of regular assignments. When such an assignment is bid for by a conductor it is conceivable that he may be choosing between it and another. If the carrier could without re-bulletining, from day to day, from circumstances or whim, chop up the assignment so that its actual time and earnings are quite indefinite, the bulletin rules would mean nothing. There is an implied guarantee of the work advertised, the men being ready and willing to perform, until such time as the assignment may be annulled by re-bulletining.

It may be noted that if such deductions were permissible they should certainly have been specified under the rules governing "Deductions." There is no mention of such contingency there. Accordingly the claim must be sustained.

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

That the employe is entitled to credit for the time from 8:35 A. M., at which time he reported, to the completion of his run back to Roanoke.

AWARD

Claim sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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