

Award No. 663

Docket No. PC-581

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John A. Lapp, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: "Conductor Reynolds requests restoration of 3 months and 26 days to his seniority rating, which was deducted for time spent on a leave of absence beginning April 30, 1934."

EMPLOYEES' STATEMENT OF FACTS: "This grievance has been presented under the terms of the Agreement between The Pullman Company and Conductors in the service of The Pullman Company, effective December 1, 1936. The decision of the highest Pullman officer designated for that purpose is shown in Exhibit 'A.'"

"The rules governing seniority then in effect did not provide for any deductions therefrom for time spent on leave of absence. Rule 7 (a), Exhibit 'B', shows that seniority will be continuous from last date of employment."

CARRIER'S STATEMENT OF FACTS: "On April 28, 1934, H. W. Reynolds, Pullman conductor in the Pennsylvania Terminal (New York) district, made written request for a leave of absence for 60 days, to become effective on April 30th following, for the transaction of personal business. His letter contained a statement of his understanding that the period of his leave would be deducted from his seniority credit. Photostatic copy of his letter is attached hereto, designated as our Exhibit 'A'. Conductor Reynolds' request was granted and his leave was extended on two occasions for 30 days each upon his written request. He was absent on leave for personal reasons from April 30th until August 26th, 1934, a period of 3 months, 26 days. Deduction of that time was made from his seniority credit appearing on the seniority rosters for conductors of the Pennsylvania Terminal District posted in January of 1935, 1936 and 1937.

"Mr. Reynolds was employed by The Pullman Company as conductor in the Pennsylvania Terminal District on November 13, 1923 and was credited with conductor's seniority from that date on all conductors' seniority rosters posted in January of each year in the Pennsylvania Terminal District from 1924 to 1934 inclusive. He was credited with conductors' seniority on the rosters posted in January of 1935 with seniority from November 13, 1923, less 3 months, 20 days, which deduction was in error and should have read for 3 months, 26 days. No protest was made during 1935 of this deduction. The rosters posted in January of 1936 and January of 1937 show him with a seniority credit from November 13, 1923, less 3 months, 26 days, thereby giving him a seniority 'date' on such rosters of March 9, 1924. His position on the January 1934, roster was that of No. 119 and he was immediately followed by—

120 F. R. Quinn,	with seniority "date" of December 10, 1923,
121 S. A. Voorhees,	with seniority "date" of December 28, 1923,
122 L. A. Monaghan,	with seniority "date" of January 2, 1924, and
123 P. J. Peterson,	with seniority "date" of January 9, 1924.

sence from February 25, 1935 to May 5, 1935. On May 23, 1935 he wrote District Superintendent J. Bryce advising his understanding that the time absent would be deducted from his continuity of service. A copy of Mr. Lankton's letter is attached hereto and designated as our Exhibit 'G.'

5. On June 26, 1935 conductor E. F. Stillings, Boston Northern District, requested a leave of absence for July and August and possibly the first part of September for personal reasons. Such leave was granted and in letter addressed to his District Superintendent C. A. Roth, dated at Mt. Desert Ferry on July 8, 1935, Mr. Stillings states his understanding that the length of his leave would be deducted from his continuity of service. A copy of Mr. Stillings' letter of July 8, 1935 is attached hereto and designated as our Exhibit 'H.'

6. On April 26, 1935, conductor C. J. Wagoner, Chicago Northern District, requested a leave of absence for 6 weeks from May 4, 1935, which was granted. On June 16, 1935 he wrote District Superintendent Gibney that he understood the time he was absent would be deducted from his seniority. Copy of his letter of June 16th is attached hereto and designated as our Exhibit 'I.'

"While conductor Reynolds and his representatives claim that deduction from his seniority credit of the time he was absent on leave April 30th to August 26th, 1934, was in violation of the agreement between the Pullman Company and its conductors and was contrary to the rules then in effect, they fail to cite any rule or any agreement which was violated."

* * * * *

OPINION OF BOARD: The question before the Board is whether, under Rule 7 (a) of the Agreement in force at the time the grievance in this case originated, leaves of absence of more than thirty days could be deducted from the seniority rating of conductors. Rule 7 (a) of the Agreement reads:

"The seniority of a conductor which is understood to mean his years of continuous service, from the date of last time employed, shall be confined to the district where he is employed."

The employees contend that under this rule no deductions in seniority rating were permissible on account of leaves of absence. The Carrier contends that prior to 1936 the practice was to deduct leaves of absence of more than thirty days from seniority rating. No evidence appears in the record refuting the contention that this was the practice prior to the present agreement.

The fact appears to be that conductors prior to 1936 took leaves of absence with the understanding that any leave would be deducted from their seniority rating if such leave exceeded thirty days. Conductors who did not take a leave of absence were, undoubtedly, influenced by the fact that the practice was to deduct such leaves if they exceeded thirty days. The rule, itself, is not specific and does not indicate clearly whether "continuous employment" includes leaves of absence or not. The parties to the agreement evidently concluded that the rule was not specific, for in the 1936 Agreement it was expressly stated that leaves of absence were not to be deducted from seniority rating. The practice of deducting leaves of absence of over thirty days having prevailed, it is obvious that if a conductor is now given a restoration of any deduction he would jeopardize the rights of other conductors. Rule 7 (a) not being specific on the point and the practice having prevailed for many years, of deducting leaves of absence from seniority rating, the restoration of deductions in seniority rating now to some conductors would take away the established rights of others.

The Carrier based part of its case upon the contention that Conductor Reynolds had signed a statement that he understood that a deduction in his seniority rating would be made and that this constituted an individual con-

tract. This, of course, would be impossible if Rule 7 (a) were specific, for a general contract entered into on behalf of all conductors could not be modified by an individual contract entered into under the circumstances.

The Board holds that Rule 7 (a) did not specifically cover the point at issue and that it was the practice prior to 1936, as contended by the Carrier, to deduct leaves of absence extending over thirty days from seniority rating.

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 evidence of record does not sustain the claim of the petitioner in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1938.