

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 R. L. Baker claims additional pay of 3 days for two trips in his regular assignment on which he was doubled out 24 hours ahead of time, once in the last half of April and once in the first half of May, 1937. Conductor J. D. Goodman claims additional pay of 1½ days for one trip in the same line on which he doubled out 24 hours ahead of time April 30, 1937. This line is 2292 running between Norfolk and Cincinnati."

EMPLOYEES' STATEMENT OF FACTS: "This joint grievance has been presented in accordance with the Agreement between The Pullman Company and the Conductors in the service of The Pullman Company. Decision of the highest officer designated for that purpose is shown in Exhibit 'A.' Rule 24, under which the claim is based, is shown in Exhibit 'B.'"

CARRIER'S STATEMENT OF FACTS: "During April and May, 1937, conductors R. L. Baker and J. D. Goodman, Norfolk District, operated between Norfolk and Cincinnati in line No. 2292 (Norfolk and Chicago). Due to inability of conductor A. L. Cherry, one of the five conductors assigned to this line, to take out his run from Norfolk on April 27th and May 2nd, 1937, it was necessary to double out of Norfolk each of the four other conductors in the assignment starting April 27th. This arrangement continued until conductor A. L. Cherry returned to the assignment on May 3rd. During that six day period the line was operated with four conductors instead of five. Each of the four doubled out of Norfolk 24 hours ahead of the time he would have been due to depart had he received the full amount of his bulletined layover. Conductor R. L. Baker doubled out of Norfolk in this manner on April 27th and May 1st, and conductor J. D. Goodman on April 30th. Each of the conductors who doubled received an additional day's pay for each double that he made. Conductor Baker claimed a full month's pay and 2½ additional days' pay for each of his two doubles, and conductor Goodman claimed a full month's pay and 2½ additional days' pay for the one double he made."

POSITION OF EMPLOYEES: "The manner in which payment has been made for the trips in dispute imposes a penalty on the conductors in addition to the loss of a prescribed layover. On each trip in regular turn these conductors are paid 2½ days, but when they are required to go out 24 hours ahead of time at the loss of 24 hours' layover at home, they have been paid only one day. Any other conductor making the same trip would be paid 2½ days for each such trip, as prescribed in Rule 21, Exhibit 'C.' Obviously, if conductors are entitled to 2½ days' pay when working less than full time, they cannot be worked overtime for less than part-time pay. In each case

days shall be paid for in addition to all other earnings for the month.' The computation of pay for conductor Baker for the period involved in his claim is illustrated in the attached statement, designated as Exhibit 'E,' which diagrammatically shows the days for which he was paid for each round trip performed.

"From a review of our presentation herein it will readily be seen that the contention advanced by Mr. Warfield in his letters of July 16th and July 27th, 1937, our Exhibits 'B' and 'D,' to the effect that Rule 20 is not involved in this claim and that Rule 24 should govern the payment to these conductors, is not based upon a correct understanding of those rules. In this connection, attention is directed to the grievance of conductor L. R. Bobbett, St. Louis District, now before this Board. Conductor Bobbett departed from his home terminal in another side or cycle of his assigned line one day ahead of the time he was due to depart. The hourly credit for the one-way trip from St. Louis to Fort Worth that he made during the unexpired portion of his layover was 14 hours, 55 minutes, but his representative does not claim pay for that period on the basis of one-half of the time allotted to the round trip assignment (viz. one-half of 4 days) as in this grievance, but on the other hand, he demands payment for 14 hours, 55 minutes excess time on the hourly basis. It will readily be seen that although the circumstances in the two grievances are identical, the claims advanced in them are entirely different.

"It is our contention that the rules governing basis of payment have been properly applied in the payments made to conductors Baker and Goodman for service rendered by them during the months of April and May, 1937, and no reason exists for an award in their favor changing the method of payment. Therefore, their claim should be denied.

"As previously indicated herein, for the purpose of brevity, conductor Goodman's grievance has not been taken up in detail for the reason that the circumstances of it are the same as those present in the grievance of conductor Baker, excepting that one so-called double instead of two is involved. Our presentation, however, applies equally to the grievance of conductor Goodman."

OPINION OF BOARD: The employees rest their case on Rule 24 of the Agreement, which reads:

"Rule 24—Additional Pay When Used on Layover or Relief Days.
Road service performed by conductors on specified layover or relief days shall be paid for in addition to all other earnings for the month. When excess hours are included in payment on day's service basis they shall not be paid for as overtime."

The carrier contends that Rule 24 does not specify the basis of payment. The Carrier cites other pay rules which it insists govern the determination of the method of compensation. There is no dispute between the parties that the service is to be paid for in addition to all other earnings for the month. The question before the Board is whether the service rendered by Conductors Goodman and Baker on their layover days shall be paid for on a trip basis or on a day basis.

The Board holds that Rule 24 is a penalty rule designed to lessen the use of conductors on their layover time. The record shows that Conductors Goodman and Baker operated in a regular assignment and had earned the layovers on the days in question. Both of these conductors completed their monthly assignment of hours. Conductor Baker performed road service on two occasions within the spread of his layovers and Conductor Goodman performed road service on one occasion within the spread of his layover. The service rendered by each of these conductors within the spread of their layovers consisted of one-half of a round trip from Norfolk to Cincinnati. The round trip pays five days and since the conductors involved in this case performed road service within the spread of their layover, equal to one-half a

round trip, they are entitled to two and one-half days pay for each time they were required to double. Since these conductors have been paid one day for each double, Conductor Baker should be allowed three more days and Conductor Goodman one and one-half days.

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 employes involved in this dispute are respectively carrier and employes 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 facts of record sustain the contentions of the employes.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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