

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Conductor J. E. Gill, Albany District, claims additional compensation for work performed in the last half of January, 1941.

EMPLOYEES' STATEMENT OF FACTS: This case has been progressed in accordance with the rules of the Agreement between The Pullman Company and Conductors in the service of The Pullman Company. Decision of the highest ranking officer designated for that purpose is shown in Exhibit "A." Rule 9, Exhibit "B," is involved. The shortage claimed in wages amounts to 7/10 of a day during the last half of January, 1941, due to refusal to credit time held for service at home station for the first 24 hours following a trip deadhead on pass, arriving Albany at 7:15 A. M., January 28, 1941. No layover attaches to such a movement at home station which makes it necessary to cover the time with "held for service" as provided in Rule 9. The carrier applied a home layover, however, as provided in Rule 16 for trips arriving at away-from-home terminals. This deprived the conductor of the first period of 8 hours held for service on January 28-29 claimed by him.

POSITION OF EMPLOYEES: The minutes of the meeting before Superintendent J. P. Leach, New York, Exhibit "C," on October 11, 1941, give details necessary to an understanding of this claim. They show that the carrier has reversed the meaning and intent of Rule 16 to suit its purpose of reducing the pay to which the conductor is entitled on returning home deadhead on pass. Rule 16 is shown in Exhibit "D." It sets forth in the clearest and most concise language that the "two for one" layovers are to be applied only at "away-from-home station." For that reason Rule 16 does not apply to this claim. The layover in question to be covered by "held for service" time is at the home station.

The idea of applying any layover at home station following a trip deadhead is entirely new and not provided for in any rules. This layover time, in the case of regular men such as Gill in this dispute, is covered by Rule 9, Exhibit "B." In the case of regular conductors held at home station when their lines are not operating for any reason, the days held at home are fully covered, as in the claim of Conductor F. B. Coghlan, San Francisco District, who was paid five days in the month of April, 1938, for time spent at home in this manner. This claim was disposed of by Adjustment Board Award No. 827. The right of regular men to accumulate hourly credits when they are used in other service at the request of the carrier is beyond question. That is one of the primary purposes of Rule 9.

Conductor F. E. Gilliland, of the Omaha District, was withdrawn from regular assignment to make special service trip, Lincoln, Nebraska, to Phoenix, Arizona. After arrival at Phoenix he returned to Omaha deadhead on pass, as follows:

Reported Phoenix	8:10 A. M.	Dec. 22, 1940
Released Omaha	7:00 A. M.	Dec. 24, 1940

Elapsed time:	45:50 hours
Time not credited:	21:50 "
Credited hours:	24:00 "

Applying the provisions of Rule 16, Conductor Gilliland had a layover at Omaha of 26:10 hours, which expired at 9:10 A. M. December 25, 1940. He next departed in his regular assignment on December 24, 1940, reporting at 11:00 P. M., and, therefore, no "held for service" credit was due him.

The interpretation of Rule 16 as applied by the management has been accepted for 5 years without protest from the conductors. The instant claim is belated to say the least.

The petitioner has condemned the Company for trying to settle this case out of court. The confusion in the petitioner's claim, as has been fully outlined in prior submissions, and the failure of the petitioner specifically to assert its position, led the Company to the belief that if it were merely a matter of paying Conductor Gill additionally for 7/10 of a day it would be desirable to spend this money and close out the claim. The management could perceive no connection between the claim for pay for 7/10 of a day and the application of a layover following a deadhead on pass movement, since held-for-service payment is computed at the hourly rate, whereas this claim requests pay at a daily rate. Throughout the history of this case neither Conductor Gill nor the petitioner has satisfactorily demonstrated how denial of an 8 hour held-for-service claim produced a shortage of 7/10 of a day in the conductor's pay. The effort of the management to dispose of the dispute was, however, unavailing.

Whenever it is necessary to remove a conductor from his regular assignment and use him in irregular service, it is, of course, only fair that the conductor so used should not suffer. Timekeeping rules and methods are based on this idea. In the instant case, Conductor Gill received as compensation for the second half of January, 1941, \$95.59. Had Conductor Gill remained in his regular assignment after arrival at Cleveland on January 26, he would have earned but \$89.28. Moreover, by reason of having been used out of his regular assignment to St. Louis, he returned deadhead on pass to his home station at Albany, and there remained free to do as he chose from the morning of January 28th, to the late evening of January 30th, which would not have been the case had he remained continuously in his regular run.

This claim is without basis in equity or in rule.

OPINION OF BOARD: The claimant, Conductor Gill, operates regularly Albany to Cleveland on the New York Central on second section of Train No. 11, Cleveland to New York City on Train No. 20, and deadheads New York to Albany on Pass.

On January 25, 1941, he left Albany at 10:30 P. M. on second section of Train No. 11, and arrived at Cleveland at 8:20 A. M. January 26, 1941. Due to the absence of a conductor there, he was used from Cleveland to St. Louis on the same train and arrived at St. Louis at 7:15 P. M. January 26. He left St. Louis at noon January 27, deadheaded on pass and arrived in Albany at 7:15 A. M. January 28, 1941.

His regular run was out of Albany on second section of Train No. 11 at 10:30 P. M. January 27. As he did not arrive in Albany until January 28, he was held until his run was next due out. (January 30, 1941, 10:30 P. M.)

He was not allowed credit time "held for service" for the first 24 hours following deadhead trip on pass, that is, for January 28, 1941. Petitioner contends that he was entitled to credit time under Rule 9. Albany was his home station.

The Carrier contends that under Rule 16, he was paid the correct amount.

Rule 16 reads:

"LAYOVER IN INCOMPLETED REGULAR AND IN IRREGULAR SERVICE.

"A layover of two (2) hours for each hour of credited service, less rest periods or time en route not credited, with a maximum layover of thirty-six (36) hours at away-from-home station, shall apply to the following classes of service:

"Regular assignment where assignment is not completed.

"Line service not covered by bulletined schedule.

"Special service.

"A similar layover shall apply to the following classes of service, with a maximum layover of twenty-four (24) hours at away-from-home station:

"Extended special tour.

In charge of cars moving deadhead.

Deadheading on passes at direction of Management, (except in connection with witness service)."

The Carrier contends that Rule No. 16 applies to layovers at home station as well as "at away-from-home station," and has been so applied in the past.

This rule is plain and unambiguous. It specifically applies only to "at away-from-home stations." To uphold the Carrier's contention we would have to read into this rule "or at home station." This we cannot do. This would change the plain meaning of the rule as it now stands.

This Board has repeatedly held that continued violation of an unambiguous rule could not change the meaning of the rule.

The claim asks for 7/10 of a day's pay and should 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 employee involved in this dispute are respectively carrier and employee 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 Carrier violated the current agreement as contended for by the petitioner.

AWARD

Claim sustained for 7/10 day's pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1943.