

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

O. R. C.—PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Conductor F. A. Toland, Chicago Southern District, claims four (4) hours additional pay for services performed in August, 1942, said services being for work in addition to that required in his regular assignment on Line 524. Rules 4, 5 and 13 of the Agreement are involved.

EMPLOYES' STATEMENT OF FACTS: This dispute has been handled in accordance with 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." Rules 4, 5 and 13, involved in this dispute, are shown in Exhibit "B". The scheduled hours for "Relief Enroute," as embodied in the Operation of Conductors Form 93.126, are shown in Exhibit "C". The scheduled relief enroute August 18, 1942, was not given because all sleeping space in Pullman cars had been sold. This was from 2:00 to 6:00 A. M., total—4 hours.

POSITION OF EMPLOYES: Regular runs, or assignments as they are also called, are posted for bids by conductors and it is known at that time exactly what the conditions will be thereon, such as the number of men in the line, number of trips per month, number of scheduled reliefs, if any, trip and monthly hours, hours deducted for rest enroute, etc. All this information and much more is contained in the operating form, which is the guide distributed for conductors.

Conductor Toland bid for this run in accordance with the conditions as stated in the operating form. He had the right to assume that he would be provided with the rest enroute as scheduled, barring unavoidable calls from the train conductor or other employees authorized to make such calls for the purpose of handling emergencies. This claim does not originate from any such emergencies after he had retired. It originates from the failure to live up to the operating form by **not providing for any rest enroute**. For this failure to live up to the bulletined schedule of the run, the conductor was compelled to perform service in excess of the monthly requirements of the line. This constitutes overtime just the same as any other overtime performed on the conductor's own time. He is entitled to be paid for this overtime in addition to his monthly wage for completion of a month's work.

CARRIER'S STATEMENT OF FACTS: Conductor F. A. Toland, Chicago South District, in August, 1942, was operating regularly in Line 524, reporting at Chicago 9:15 P. M. first day and being released at Jacksonville 7:40 A. M. the third day.

credited hours unless the total credited hours exceeded 240 per month. The Company feels that the Organization is acting in bad faith when it comes before this Board asking the Board to grant it something by interpretation that past history shows it has never, in any negotiation, asked the Company to make part of a rule. The claim in principle is stale. It is without merit and should be denied.

OPINION OF BOARD: Under the provisions of Rules 4 and 5 of the current agreement, Pullman Conductors are paid on a monthly basis. The hours of work for a month are figured at 240, but if the assignment calls for less work in any month, no deduction is made from the established monthly wage. For any hours over the 240, additional compensation is provided for by Rule 20. Rule 13 provides for a deduction from the time spent by a Conductor on his run for hours of rest. Such deduction may be made "when sleeping space is available" on the particular trip involved. The rule reads as follows:

"Rule 13. Rest Periods Enroute—For regular and extra line service and special service movements, (except extended special tours) where the spread of the assignment includes the hours from midnight to 6:00 A. M., within which hours the rest period enroute shall be confined, deductions for rest when sleeping space is available may be made as follows for each trip:

"Maximum of 4 hours for the first night;
Maximum of 6 hours for each night thereafter."

It should be noted that this is a deduction which benefits the Carrier and is permitted only when the Carrier provides sleeping space for the Conductor.

The claimant, on his first night out on August 17th, did not get his relief period because no sleeping space was available; and there was accordingly included on his time sheet the total of his hours on duty without any deduction. The question before the Board is whether he is entitled to be paid for these four hours when the total time worked for the month, including these four hours, did not exceed the 240 hours established as the basic month period.

The contention of the employe is that he "should be paid, not merely credited, for all time worked in excess of the schedule as bulletined"; and that "credit of time without pay means nothing . . ." He calls our attention to the fact that he bid for this run under certain conditions which were set out on an operating form; that this form provided for rest periods of four hours and six hours for the two nights he was on the run, and that when he did not receive a rest period he was performing work not called for by the bulletin. He admits that late arrival time is merely credited, and not paid for unless the aggregate for the month exceeds 240 hours. But he argues that the extra time due to his loss of rest period, is different, in that the Carrier cannot control absolutely the time elapsed on a certain run, but that it can provide sleeping space for its Conductors if it wishes to do so.

We concede that the Carrier cannot vary the terms of an assignment unless such variation is authorized by the rules. The employe takes the assignment under the conditions set out in the advertisement for bids and he, as well as the Carrier, is bound by those conditions. These principles are clearly set out in Awards 621, 827, and 2060. But the awards are not in point here. The terms under which a position is offered for bids must, of course, be read in connection with the rules of the agreement in force at the time. It was pointed out in Award 621 that the deduction there claimed by the Carrier was not mentioned under the rules governing "Deductions." In the case now before us the deduction is specifically mentioned and Rule 13 contemplates that there may be a loss of the rest period. There is therefore no breach of the conditions under which the position was offered, as in the three cases covered by the awards mentioned.

We cannot agree with the claimant's contention that credit of time without pay means nothing. It certainly means something if the employe works more than 240 hours in the month, and the Carrier's loss of its right to claim the deduction renders it more probable that overtime will be paid in accordance with the provisions of Rule 20.

We construe rules not make them, and have no hesitation in holding that the Carrier, in this instance, was not obligated to pay more than the specified monthly wage since the total hours credited for the month did not exceed 240.

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 there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.