

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS—
PULLMAN SYSTEM**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Conductors L. Vielstich, G. C. King, L. G. Tate, E. A. Waggoner, H. N. Bowers and J. T. Staal, Kansas City District, who are assigned to line 164, C. B. & Q. Railroad, between Kansas City, Missouri, and Billings, Montana, claim credit and pay for all time held for service at Newcastle and Lincoln eastbound, each trip, under the operating schedule effective on or about September 3, 1942, claim being based on violation of the Agreement between The Pullman Company and Conductors in the Service of The Pullman Company, with special references to Rules 4, 6, 9, 12, 17 and 20.

EMPLOYES' STATEMENT OF FACTS: This dispute has been handled in accordance with the Agreement between The Pullman Company and its Conductors. Decision of the highest ranking officer of the carrier is shown in Exhibit "A." Rules 4, 6, 9, 12, 17 and 20 are involved and are shown in Exhibit "B." The operation of the conductors' run is shown in Exhibit "C" which is copied from the Operation of Conductors Form 93.126 dated 9-8-42.

POSITION OF EMPLOYES: Line 164 operates between Kansas City and Billings. Line 161 operates between Omaha and Sweet Grass, Montana. Six Kansas City conductors are assigned to the regular run on Line 164. They operate as follows:

- 1st day—Report at Kansas City 6:25 P. M., Line 164, go through to Billings and immediately return to Newcastle.
- 3rd day—Released at Newcastle 9:10 A. M., Line 164.
" " —Report at Newcastle 4:00 P. M., Line 161.
- 4th day—Released at Lincoln 7:00 A. M., Line 161.
" " —Report at Lincoln 11:30 P. M., Line 164.
- 5th day—Released at Kansas City 7:15 A. M., Line 164.
Layover from 7:15 A. M. 5th day to 6:25 P. M. 7th day and repeat.

This operating schedule violates the intent and purpose of the Agreement. This is especially true of Rules 4—6—9—12—17 and 20.

Rule 4 is violated because all hours worked are not properly credited. There are 6 hrs. 50 minutes at Newcastle and 16 hrs. 30 minutes at Lincoln held for service not credited.

Rule 6 is violated because conductors are not released at Newcastle or Lincoln but held for service, and hence entitled to hourly credits at those points.

Each conductor in the assignment as established effective September 3, 1942, received credit and pay for the time he worked, that is the time on duty, in the month. If he completed all of his round trips in a 30-day month he received credit for five round trips or, in all, a total of 237:30 hours. Thus, this was an undertime assignment, each conductor operating in it received a full month's pay, or 240 hours' pay, for performing 237:30 hours' work. In accordance with the provisions of Rule 20, that "Conductors in regular assignment shall be credited for a round trip the number of days there are conductors in the assignment, as covered by bulletined schedule.", each conductor in this assignment completing a round trip was credited with six days so that at the end of a 30-day month, having completed all of his five round trips, he was credited with a full month's work. Naturally, if he performed any overtime work which increased his credited hours to more than 240 in a month, he was paid additionally for the hours in excess of 240. The Organization claims this rule was violated "... because the number of days credited for a round-trip has been reduced improperly." Since there were 6 men in the assignment and each conductor in the assignment received credit for 6 days for a round trip in the assignment, it is impossible to see how the Organization can contend that the rule was violated.

From the foregoing discussion of the rules which the Organization claims were violated, it can be seen that most of them are absolutely irrelevant to this dispute and that there has been no violation of any of them. The Pullman Company has shown that the layovers established in the operation effective September 3, 1942, were not in violation of any rule of the Agreement and were prescribed in the operating schedule in accordance with the provisions of Rule 15. The Organization can point to no rule in the Agreement which specifies the amount of away-from-home layover which can be prescribed in a regular operation, nor can the Organization point to any rule which limits the number of locations where away-from-home layovers can be established in a regular operation.

No proof has been furnished that the conductors' operation bulletined as Line 164, effective September 3, 1942, was in violation of the Agreement. The claim of the Organization is without merit and should be denied.

OPINION OF BOARD: This case involves Pullman conductor operations between Kansas City, Mo., and Billings, Mont., under a schedule effective September 3, 1942. A conductor reporting for duty at Kansas City at 6:25 P. M. first day, went through Lincoln and Newcastle on train 43 to Billings, arriving there at 10:55 P. M. second day. He immediately and without release, handled companion train 44 from Billings to Newcastle, where he was released at 9:10 A. M. third day. After 6 hours 50 minutes, he reported for duty at 4:00 P. M. third day and handled train 42 to Lincoln, where he was released at 7:00 A. M. fourth day. After 16 hours 30 minutes, he reported for duty at Lincoln at 11:30 P. M. fourth day and again handled train 44 to Kansas City, where he was released at 7:15 A. M. fifth day. Trains 43 and 44 operated between the Kansas City and Billings terminals on carrier's line 164 and belonged to the Kansas City district. Train 42 operated between Omaha and Billings as line 161 and belonged to the Omaha district.

The question is whether the time spent at Newcastle and Lincoln constituted layovers or time held for service. Claimants assert the latter.

Rule 15 of the effective Agreement of December 1, 1936, reads:

"Layovers in Regular Assignment. Specific layovers shall be prescribed in operating schedules for regular assignments."

In their statement of position the claimants say:

"The right of the Carrier to establish layovers is not only conceded, it is demanded" . . . "there is no dispute as to the number of layovers permissible" . . . "Of course there may be more than two lay-

overs in an assignment" . . . "The question does not deal with the number of away-from-home layovers" . . . "There is nothing in this case even to suggest that transfer of the conductors from one train to another on the home-bound trip was a violation of the rules or that the trip had to be made on any specific train" . . . "Whether or not the Carrier had the right to require the Kansas City conductors to get off their regular trains and wait for the following trains for the sole purpose of providing conductors' services thereon, is not a part of this dispute."

When the claimants' admissions, especially the one last quoted, are applied to the facts of this case we are left without any light as to the theory upon which they predicate their contention that the periods here involved constituted time held for service. Said admissions preclude every conceivable hypothesis upon which the claim might possibly be sustained. All that we have before us is the bare assertion that this case involves time held for service, rather than layovers. No rule, precedent, formula, practice, fact, or reason, compatible with the above admissions, has been advanced in support of the claimants' position. A claimant who comes before this Board assumes the burden of presenting some consistent theory which, when supported by the facts, will entitle him to prevail. The Board cannot assume the burden of searching the record in quest of reasons why relief should be granted. The claimants have wholly failed to make out their case.

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 employees involved in this dispute are respectively carrier and employees 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 no violation of the agreement has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1944.