

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and in behalf of Conductor C. L. Henninger, of the Los Angeles District, that The Pullman Company violated Rules 9 and 31 of the agreement effective December 1, 1936, when it failed to credit him with 8 hours held for service time out of each 24-hour period in Los Angeles from arrival on March 7, 1945, until he was due out on his regular assignment, Line 3463; total time lost 9 days. Claim is made that Conductor Henninger be paid for this loss of time, caused by failure to assign him to Line 3463, and by the improper assignment made on February 28, 1945.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between The Pullman Company and Conductors in its service, effective December 1, 1936. This dispute has been progressed in accordance with the agreement. The decision of the highest officer designated for that purpose denying the claim, is attached as Exhibit No. 1.

Conductor C. L. Henninger, Los Angeles District, was the successful bidder on a vacancy in Line 3463, posted February 9, 1945. This line operated in Southern Pacific trains 5 and 6, between Los Angeles and New Orleans. Rule 31 of the agreement required that the successful bidder be assigned to the vacancy on February 25, 1945. Conductor Henninger had held an assignment in Line 3497½, Southern Pacific trains 370-371. His layover in that line at Los Angeles expired February 28, 1945. As the successful bidder for the vacancy in Line 3463, Conductor Henninger was due to go out on March 9, 1945.

Instead of being permitted to go out in Line 3463 on March 9, 1945, he was instructed to make another round trip in Line 3497½ in which he returned to Los Angeles on March 7, 1945.

His scheduled turn left Los Angeles on March 9th. He was not used on that turn. He departed from Los Angeles in Line 3463, the assignment which he had bid in, on March 22, 1945. He actually lost 13 days' time. He made claim for 9 days lost time, which claim is herewith before your Honorable Board for decision.

Hearing in connection with this claim was held in office of District Superintendent Fitzgerald of The Pullman Company, Los Angeles, on April 4, 1945 and an adverse decision received from him under date of July 10, 1945. Further hearing was held in office of Superintendent Armstrong, The Pullman Company, San Francisco, on August 1, 1945. At the conclusion of this hearing Superintendent Armstrong verbally sustained the denial of the claim by District Superintendent Fitzgerald, dated July 10, 1945.

that Mr. Wise recently has progressed two porter in charge claims to the Board, both of which claims arose under the old Agreement.

Clearly, the General Chairman of the Order of Railway Conductors, Pullman System, is not only in error in progressing the instant claim to the Third Division but is, as well, attempting a thoroughly unprincipled repudiation of his own agreement. The Company is astonished that General Chairman Wise would appeal this case to the Board in complete disregard of his agreement with Management that the settlement of the cases submitted by him for consideration in August, 1945, would dispose of all outstanding claims. For the Board to allow this case to be considered at this late date in disregard of the agreement between Mr. Wise and the Company would be to undermine the Company's efforts to work out with the Organization on the property the solution to claims and would in the future discourage any attempt at the settlement of such claims.

Conclusively, the conductors' Organization should be held to its agreement with Management regarding the disposition of claims arising under the 1936 Agreement, and the instant claim should be dismissed by the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The submissions of the parties disclose that Conductor C. L. Henninger prior to the incidents involved here had held a regular assignment in Line 3487½, Los Angeles, California, to New Orleans, Louisiana, and return. While in this assignment he bid for and was awarded a vacancy in Line 3463 effective February 25, 1945. His layover from his last trip in Line 3487½ expired February 28, 1945. After the expiration of layover time in Line 3487½, it was not possible for him to go out on his assignment in Line 3463 until March 9, 1945. This would have occasioned the loss to him of 9 days' time. In order to prevent or cut down loss of time, he made another trip in Line 3487½. This was in point of fact agreeably arranged between a representative of the Carrier and Henninger. This trip is the one for which claim was made on behalf of the eligible extra conductor in Award 3846, wherein the claim was sustained. Henninger returned from this trip on March 7, 1945. The side of the Line to which he was assigned in Line 3463 was due out March 9, 1945. He was not given the assignment, but was required to lose the time up to March 22, 1945, the next departure date for this side of the Line. His claim is for 9 days' loss of time on this account. The time alleged to have been lost is more than 9 days, but the claim is only for that number.

Apparently the theory of the Carrier in not allowing him to take the assignment on March 9, 1945, was that he was not available until after the expiration of layover time on regular assignment in Line 3487½. On this theory, layover time had not expired on March 9, 1945.

The theory of the Organization is that the trip made on Line 3487½ after Henninger was relieved from his assignment therein was made as an extra conductor, in consequence of which he was entitled to no layover time; hence, he was eligible to take the assignment in Line 3463 on March 9, 1945, and, being eligible and not allowed to take it, was entitled to be compensated for the time lost on account thereof.

To support its position, the Organization calls attention to a parallel factual situation wherein the Carrier made settlement in conformity with the contention of the Organization herein. Whether the settlement was made on the basis of the theory advanced here is not made known, but the facts as related in this docket present a very definite parallel.

Of course, that settlement is not controlling, and should not be followed here, unless separately and apart therefrom on the merits of this claim this Board comes to a like conclusion. Its consideration may, however, serve as an aid in making clear uncertainty or obscurity of meaning of the agreement through disclosure of the attitude taken by the parties.

Whether or not Conductor Henninger was entitled to no layover time following the trip, which was held in Award 3846, to have been as an extra

conductor, need not be decided here, but certainly he was not entitled to, and was not required to take, the assigned Los Angeles layover of Line 3487½, which would have prevented his assignment to Line 3463 on March 9, 1945.

No rule of the agreement has been cited or found clearly defining the rights of an extra conductor with regard to layover at the home terminal and the corresponding right and duties of the Carrier, unless it be Rule 17. If this rule is applicable to extra, as well as regularly assigned conductors, it would appear that Henninger could have been sent on in Line 3463 at any time after return from the extra trip in Line 3487½, subject only to the limitation of hours contained in Rule 17 and subject to the application of Rule 15 to the assignment of Henninger in Line 3463. Rule 17 is as follows:

"Days Off Duty. Not less than 96 hours off duty each month in 24-consecutive-hour periods, or multiples thereof, shall be allowed at designated home terminal, which shall be the point where conductor's name appears on roster, except where, for convenience of conductors, the management designates the opposite terminal."

Rule 15 is as follows:

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

It does not appear that to have allowed Henninger to take over his assignment in Line 3463 on March 9, 1945, would have been in violation of these or any other rules of the agreement. This being true, he was eligible, and being eligible, he was entitled to the work. The failure to allow him to take over the assignment was such a violation as will permit him to receive pay for the time lost to the extent that claim has been made therefor.

As in Award 3846, the Carrier has stressed a defense to the claim embodying a contention that there was an oral agreement between the representatives of the Carrier and of the Organization which prevents its allowance.

The factual situation is the same as there where it was fully considered and disposition made of it. It must receive the same treatment here as there. Therefore, that part of the Opinion therein will be adopted by reference as a part of this Opinion.

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 the claim has been sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of April, 1948.