

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, 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 J. C. Torrie of the Columbus, Ohio, Agency, that The Pullman Company violated Rules 10 (b) and 22 of the Agreement between The Pullman Company and its Conductors, when,

1. On April 25, 1948, Conductor Torrie, who had reported for and gone on duty on his regular assignment in Line 2379, and subsequently removed therefrom, was paid for the time worked on his regular assignment in the station as a road trip, under Rule 21.

2. We now ask that Conductor Torrie be credited and paid 7:30 hours under Rules 10 (b) and 22, as station duty, for reporting for his regular assignment and not used in road service, less the amount already paid him, viz., 1/12th day.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in its service, effective September 1, 1945, revised effective January 1, 1948. This dispute has been progressed up to and including the highest officer of the Carrier designated for that purpose, whose letter dated November 20, 1948, denying the claim is attached as Exhibit No. 1.

On April 25, 1948, Conductor J. C. Torrie was regularly assigned in Line 2379, operating between Columbus, Ohio, and Pittsburgh, Pennsylvania, on Pennsylvania Railroad Trains No. 202, outbound, and No. 227, inbound. Conductor Torrie's assignment required him to report for duty at Columbus on the outbound trip, Train No. 202 at 9:20 P. M., receive passengers 9:30 P. M., and depart from Columbus 2:25 A. M.

On April 25, 1948, Conductor Torrie reported for his regular assignment at 9:20 P. M. for trip to Pittsburgh and return. He received passengers from 9:30 P. M. to 9:40 P. M. when he was removed from his regular assignment by an official of the Company and used in an emergency in extra road service, Line 2331, on P. R. R. Train No. 155 from Columbus to Indianapolis.

For the 20 minutes on duty in Columbus Station from 9:20 P. M. to 9:40 P. M. the Carrier paid Conductor Torrie 1/12 day's pay under the provisions of Rule 21. Conductor Torrie presented claim for credit and pay of 7:30 hours for the 20 minute period on duty in Columbus Station under the provisions of Rules 10 (b) and 22. This claim was denied.

ment and properly was credited by the Company under the provisions of Rule 6 and paid for under the provisions of Rule 21 of the Agreement. Further, the Company has shown that Rules 10 (b) and 22, cited by the Organization, are nowise applicable to this dispute. The claim in behalf of Conductor Torrie is without merit and should be denied.

OPINION OF BOARD: In the controversy before us we are asked to determine which of two rules of the Agreement is controlling, Rule 10 or Rule 21. The facts are not in dispute. The Claimant, a regularly assigned conductor, reported for work in his regular assignment, Columbus-Pittsburgh, at 9:20 P. M., April 25, 1948. After he had performed duties in his assignment for twenty minutes he was released and assigned to another line run, Columbus-Indianapolis, as an extra conductor to replace a regular conductor who had been left on a station platform somewhere.

For this twenty minutes' service Claimant invokes Rule 10 (b) and asks for the minimum of 7:30 hours' credit and compensation provided for in that rule. The Company contends that Rule 21 applies and that Claimant was properly compensated for the twenty minutes when he was paid for one-twelfth of a day, its minimum allowance under Rule 21. For his extra emergency Columbus-Indianapolis service he was compensated separately under Rule 6.

Rule 21, Regular Assignments—Part Time, reads: "Conductors working part time on regular assignments shall be paid for a round trip the number of days there are conductors in the run as covered by bulletined schedule; less than a round trip shall be paid for proportionately."

As part of this rule, presumably for purposes of clarification, we find five examples, one illustration and two sets of questions and answers. None of these explanatory illustrations touches upon the situation before us nor, in spite of the phrase "less than a round trip shall be paid for proportionately", is any mention made of less than 7:30 hours. Nor, indeed, are the terms "station duty" or "called and not used" found in Rule 21 or in the illustrations. Claimant was not "called"; he merely reported for duty.

Rule 10, Station Duty, Section (b) of which is invoked by Claimant, reads: "When a **regularly assigned** conductor is required to perform station duty, load trains, or when called and reporting for road service and not used, such time shall be credited on the hourly basis and paid for in addition to all other earnings for the month, with a minimum credit of 7:30 hours for each call, . . ." (An exception, stated in the rule, does not apply here.) Station duty is not defined in the Agreement or in the record.

In Award No. 3471, cited in behalf of the Claimant, where the question was one of the right of ticket agents, not covered by Conductors' Agreement, to "lift" tickets in advance of arrival of Pullman conductors, we said: "We think . . . the work . . . is inherently a part of a Pullman conductor's duties. Although it is not spelled out in the Agreement, it is work which the Agreement contemplates as a part of the work which Pullman conductors are assigned to do. It may or may not be all of the work which a Pullman conductor assigned to station duty (Rule 10) would do, but it certainly is a part of such work." Even the testimony of the General Chairman before the Emergency Board in the Pullman Conductors' Rule Case in 1945, quoted in the record by the Company, fails to define what kind of work constitutes station duty. It only leaves an impression that it is something other than "lifting" tickets or receiving passengers for a line run to which the conductor is assigned. A clear definition is desirable but not absolutely necessary to a determination in the instant case.

If, in the absence of other precedents, the best guide is what the parties themselves have done or accepted in the past, we may rely here

on what was done in the case of Conductor Beaupre. Beaupre was an extra conductor who reported for service, received passengers for forty-five minutes, was removed from his assignment and reassigned to another line where he performed road service, on that, his second assignment. He was paid for 3:45 hours, under Rule 10 (a) for the forty-five minutes' service in his original assignment and separately for his road service.

If a "round trip" begins when a conductor reports for duty and performs any service, however brief, payment for such proportion of the scheduled round trip satisfies a literal interpretation of Rule 21. That is the construction the Company appears to have put upon the rule in the instant case. Is this what was contemplated by the parties? Suppose both the Claimant here and Beaupre, instead of having been transferred to other runs after rendering a few minutes' service (part of a round trip if a round trip begins when the conductor reports) had been released from duty and returned home, would Rule 21 and the other rules of the Agreement, including Rule 10, have been adequately honored? We doubt it.

Our belief that the parties did not contemplate that a case such as the one before us should be governed exclusively by Rule 21 is fortified, in addition to the Company's action in the Beaupre case, by a careful reading of the clarifying examples, the illustration and the questions and answers made a part of the rule.

Does the "called (reported) and not used" provision of Rule 10 cease to operate when the conductor is released from duty after twenty or thirty minutes' service? Is it not more reasonable to assume, in the absence of spelled out definitions, that the parties contemplated that conductors "called (reporting) and not used" should receive at least the minimums provided for in Rule 10; 3:45 hours for extra conductors and 7:30 hours for regular conductors, rather than one-twelfth of a day or any such proportion of a round trip?

Claimant's situation parallels the Beaupre situation in every respect except that Beaupre was an extra conductor and Claimant was a regularly assigned conductor. Rule 10 covers both services, (a) "extra conductor" and (b) "regularly assigned conductor". Beaupre was paid 3:45 hours, the minimum provided for work under (a); Claimant seeks 7:30 hours, the minimum provided for under (b) of the same rule.

The Company contends the Claimant earned more as a result of the transfer than he would have earned had he not been disturbed in his regular run. The record supports this contention but that is not the issue here. The fact that either or both of these conductors, Beaupre or the Claimant, earned additional compensation in the alternate runs to which they were assigned is incidental and should not be allowed to warp our judgment with respect to the appropriate application of Rules 10 and 21. The Company chose to credit Beaupre with the minimum provided for in Rule 10 rather than one-twelfth or two-twelfths of an hour under Rule 21.

We conclude that Rule 10 applies here as the Company applied it in the Beaupre 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 the Agreement was violated.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of December, 1949.