

Award No. 4659
Docket No. PC-4496

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 W. H. Miller of the Washington District, that The Pullman Company violated Rules 13, 14, 22, and 23 of the Agreement between The Pullman Company and its Conductors, when,

1. On November 8, 1947, Conductor Miller was assigned to operate on PRR train No. 142, Washington, D. C., to New York, and assigned to operate on PRR train No. 147, New York to Washington and his time was computed on a continuous time basis.

2. We now ask that Conductor Miller be credited and paid for a minimum day, 7:30 hours in each direction on the above trips; as Conductor Miller has been credited and paid for 11:35 hours, we now ask that he be credited and paid for an additional 3:25 hours.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in its service, effective September 1, 1945. Also a Memorandum of Understanding Concerning Assignment of Extra Conductors, Effective September 22, 1947, shown at pages 58-59 of the current Agreement. This dispute has been progressed up to and including the highest officer of the Carrier designated for that purpose, whose letter denying the claim is attached as Exhibit No. 1.

Conductor W. H. Miller was assigned to operate November 8, 1947, in extra service from Washington to New York on PRR train No. 142 and from New York to Washington on PRR train No. 147. Conductor Miller's sign-out slip instructed him to carry his time continuous from Washington to New York and return and destination of the trip was shown as Washington.

Conductor Miller reported for duty at Washington, train No. 142, 1:20 P. M., November 8, 1947, departed 2:00 P. M., arrived New York 6:00 P. M. and released from duty 6:20 P. M., same date. This reporting and release time is identical with that of the regularly assigned conductor on that train. In accordance with instructions given on sign-out slip Conductor Miller reported for duty at New York, train No. 147, at 6:20 P. M., November 8, 1947, departed 8:30 P. M., arrived Washington 12:35 A. M., November 9, 1947, released from duty 12:55 A. M., same date. No period of release from duty was given Conductor Miller at New York. He was credited and paid on a continuous time basis, or for 11:35 hours, from

assignment of an extra conductor and has ruled upon the obligation of the Company as regards the intent and application of a given rule of the Agreement (Exhibit B, pp. 19-20). In Award 3973 rendered in the dispute identified in the records of the Third Division as Docket No. PC-3816, the Adjustment Board denied the claim and stated under

OPINION OF BOARD, as follows:

"It will be observed that the foregoing rules are silent as to the length of the assignment of an extra man."

The language of the Award further sets forth, with especial reference to Rule 38 allegedly violated by the Company, the Board's interpretation of the intent and application of a Rule, as follows:

"We think the rule indicates an intent to equalize extra work among extra conductors. Where the Carrier can carry out the intent of the rule without doing harm to its own interests, it is obligated to do so. Pursuant to this intent of the rule, the practice has been followed where the extra work arises at a point where a seniority roster is maintained, to assign the work each day on a trip basis. This is not done in furtherance of any specific language of the rule. It is done in compliance with the historical intent of the rule to equalize the work of extra conductors where the Carrier is not prejudiced thereby."

The Company believes that its procedure in the instant dispute conforms to the meaning and intent of the rules of the Agreement and is not out of harmony with the reasoning of the Adjustment Board in Award 3973.

CONCLUSION.

We have shown in this ex parte submission that there was no violation of Rules 13, 14, 22 and 23 of the Agreement in the manner in which Conductor Miller was operated between Washington and New York in the round-trip assignment of November 8-9, 1947. It is the Company's position that under Rules 6, 14, 23 and 38 it properly may couple outbound and inbound extra service trips on a non-released basis with minimum credit and pay of 7:30 hours and credit and pay for actual hours on duty in excess of 7:30 hours. **Rule 6. Regular and Extra Service** prescribes that time shall be credited in extra service from time required to report for duty until released. Conductor Miller was not released from his assignment until his arrival in Washington on the return trip of the assignment. **Rule 14. Release Less than One Hour** sets forth that Management may make no deduction from the continuity of a conductor's time when his release from duty is less than one hour. It clearly follows, therefore, that the Company may or may not elect to make a deduction from the continuity of time when the conductor's release from duty is one hour or more. Also, **Rule 23. 7½ Hour Minimum Payments** permits the Company to operate conductors in extra road service, deadheading on passes, deadheading with equipment and in combinations of any such services. Finally, **Rule 38. Operation of Extra Conductors** denotes the manner in which the extra work of a district is handled and sets forth that a foreign district conductor may be used out of a station in service moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station. The Rule also prescribes an Assignment to Duty slip showing time and place the conductor is to report for duty; also, destination of the assignment is furnished the conductor, all of which provisions were complied within the manner in which Conductor Miller was operated on November 8-9, 1947. The Organization has not and cannot show any violation of the provisions of any of the rules of the Agreement. The instant claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. "The issue in this dispute", the Carrier contends, "relates to whether or not an extra conductor may be assigned to combined extra service trips on a round trip basis, from reporting time at home terminal until released at that point".

On November 8, 1947, the Carrier issued an Assignment to Duty slip to the Claimant, extra Conductor Miller, to perform the following service: "Extra service as Helper on PRR 142 to N. Y. handling Sou. 18's sleepers—Return from N. Y. on PRR 147 in charge of parlor cars—continuous time. The destination of this trip is Washington, D. C."

In the performance of this service Miller reported for duty in Washington at 1:20 P. M., arrived in New York 6 P. M. and was released from duty (but not from his assignment) at 6:20 P. M. He reported immediately for duty as helper-conductor but did not leave New York until 8:30 P. M., arriving in Washington at 12:55 A. M., November 9, 1947. He was paid for the elapsed time, a total of 11:35 hours. He claims a minimum day for each trip.

In justification of this round trip continuous time arrangement the Carrier relies upon Rules 6, 14, 23 and 38.

Let us examine these Rules in order:

"Rule 6. Regular and Extra Service. Time for regular and extra service . . . shall be credited from time required to report for duty until released, . . ."

The difference between the parties here lies in the interpretation put upon "released". They agree Claimant was released from duty in New York at 6:20 P. M. The Organization contends this constituted release under the rule; the Carrier says that while he was released from duty he was not released from his assignment until he arrived in Washington on another train on the return trip.

"Rule 14. Release Less than One Hour. When release from duty is less than one hour, no deduction shall be made from the continuity of time."

Claimant reported for his return trip assignment immediately after release from duty at 6:20 P. M. but did not leave for Washington until 8:30 P. M. Carrier paid for the waiting time, 6:20 P. M. to 8:30 P. M. because the Assignment to Duty slip provided for payment on a continuous time basis. The Organization contends he was actually off duty from his release at 6:20 P. M. until he reported for duty at 8:30 P. M., which makes the rule inapplicable. Resolution of this difference depends upon the interpretation of "release from duty" which is related to the manner in which assignments are made. This will be discussed later.

"Rule 23. 7½ Hour Minimum Payments. Conductors in irregular road service or deadheading . . . who perform less than 7½ hours' service from reporting time until released shall be credited and paid not less than 7½ hours, a minimum day."

The Carrier contends this Rule does not apply to the instant case because "from reporting time until released" was, in accordance with Miller's Assignment to Duty slip, from the time he left Washington at 1:20 P. M. until he arrived back in Washington at 12:55 A. M. the next day. The Organization maintains that he was released from duty twice, once in New York upon arrival and again upon arrival in Washington.

Rule 13, **Rest Periods En Route**, under the general heading "Deductions", invoked by the Organization, contains this provision:

"A uniform reporting and release time shall be established for each station in each district and agency."

The Carrier maintains this is merely a protective measure in the interest of conductors to prevent unjust deduction by the Carrier for sleep between 12:00 midnight and 6:00 A. M. The Organization, relying on the Memorandum of Understanding, Effective September 22, 1947, as additional evidence that the parties have agreed to a wider application of this provision than the Carrier suggests, contends that assignments must be made at the station in each district where the extra work originates.

The "Memorandum of Understanding Concerning Assignments of Extra Conductors" reads:

"In the application of Paragraph C. Rule 38, operation of Extra Conductors, of the Agreement effective September 1, 1945, it is understood that a regular signout period shall be established in each District, at which time assignments will be made on a 24-hour period. The signout shall not be less than 30 minutes nor more than 4 hours in length."

The established signout period, on the date of this claim, at the Pennsylvania Terminal District, New York, it has been contended in behalf of the Organization, was from 11:00 A. M. to 2:00 P. M. and from 10:00 A. M. to 12:00 noon in the Washington District.

Now we come to Rule 38, **Operation of Extra Conductors**, sections (b) and (e), which the Carrier relies upon for justification for the round trip assignments in question:

"(b) Extra conductors shall be furnished an assignment slip showing time and place required to report for duty, also destination."

The Organization contends that there were two destinations: New York for the outbound trip and Washington for the return trip. In the absence of any other definitions of "destination" than those commonly found in dictionaries we think there can be no doubt that the Carrier here complied with the literal requirements of this provision.

In Section (e) of Rule 38 we find:

"(e) This rule shall not operate to prohibit the use of a foreign district conductor out of a station in service moving in a direct route toward his home station or to a point within a radius of 50 miles of his home station."

The Carrier contends that this rule, specifically sections (b) and (e) justifies its action.

We think Example 1, which appears in the Agreement immediately under section (e) throws light on the contemplated application of the Rule:

"A St. Louis District conductor available in Chicago may be used on any railroad having a direct rail route or through Pullman service between these points.' (Emphasis ours.)

What does **available** mean in this connection? Does it mean the conductor referred to in the example was available in Chicago for assignment to St. Louis at some future time while he was still in St. Louis before he arrived in Chicago or even before he began his trip? Is this really what is meant as applied in the instant case to an extra conductor, by "use of a foreign district conductor out of a station in service moving in a direct route toward his home station?"

We do not think so. We think this provision of the Rule was intended to serve another and wholly legitimate purpose. Pullman operations are complex. Extra conductors must be sent home. There is provision for this under Rule 23. Presumably in the interest of economy,

a worthy objective, various combinations of service, deadheading, etc., are provided for under Rule 23.

They do not, however, solve the entire problem of getting extra conductors home economically. If they cannot be assigned to duty out of turn in the destination station how can they get home economically? Isn't this what Rule 38 (e) is intended to accomplish? We think it is. This interpretation gives substance, not only to the word "available" as used in Example 1, under Rule 38 (e), but it affords an orderly method for carrying out the signout arrangements at the stations as provided for in the Agreement and the Memorandum of Understanding, effective September 22, 1947.

If that be true the case before us represents an exception. However that may be, and confining ourselves to an analysis of the applicable rules and the Memorandum of Understanding and the record, we conclude authority does not exist for short circuiting the assignment and signout rights appropriately belonging, by the Agreement and the Memorandum of Understanding, to the New York District, as was done here. These Rules and their sections do not stand alone and separate; they must be considered together. Section (e) of Rule 38, with Example 1, for instance, modifies section (b) of the same rule in the manner we have recited.

It has been urged, in behalf of the Carrier, that if this claim is sustained a claim then may be made for a call for an extra conductor on the New York roster. We have not given consideration to that contingency because such a claim has not come to us. We have confined our concern here to the relative rights of claimant Miller and the Carrier under the Agreement and the Memorandum of Understanding.

Based on the facts of this dispute, we conclude the Agreement with the Memorandum of Understanding, effective September 22, 1947, does not provide for "combined extra service trips on a round trip basis, from reporting time at home terminal until released at that point".

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 Employes involved in this dispute are respectively carrier and employes 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 16th day of December, 1949.