

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, 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 on behalf of Conductor R. H. Nissen, Chicago Eastern District, that The Pullman Company violated Rules 12 and 20 of the Agreement between The Pullman Company and its conductors in computing Conductor Nissen's time for the month of June, 1948, with special reference to the trip departing from Chicago under date of June 29. The Management carried 4:15 hours from June into July, in violation of the rules. We now ask that these 4:15 hours be added to the other accumulated hours in the month of June and such time be paid for under the applicable rules.

EMPLOYEES' 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 denying the claim is attached as Exhibit No. 1.

The rules of the Agreement, pertinent to, or directly applicable in the instant claim are as follows:

Rule 1. "(a) Rates of Pay. The following rates of pay shall be applicable to all conductors employed by The Pullman Company:

| Service Periods | Rates Per Month | Rates Per Hour |
|---------------------|-----------------|----------------|
| First Year | \$323.20 | \$1.4365 |
| Over 1 to 2 years | 333.20 | 1.4809 |
| Over 2 to 5 years | 340.70 | 1.5142 |
| Over 5 to 10 years | 348.20 | 1.5476 |
| Over 10 to 15 years | 351.20 | 1.5609 |
| Over 15 years | 356.20 | 1.5831 |

"(b) Daily Rates of Pay. The daily rate of pay of a conductor shall be determined by dividing his monthly rate by the number of days there are in the current month."

Rule 4. "Basis Month. (a) 225 hours' work credited as herein-after provided shall constitute a basic month's service.

"(b) * * * * *"

Rule 5. "Assignments Less than 225 Hours. Where a regular assignment is less than 225 hours' work per month, deduction shall not be made from the respective established monthly wage in consequence thereof."

thus perhaps putting that month in the premium payment class while abnormally lowering the credit hours for the succeeding month.

The Board recommends that the Company proposal should be placed in the Agreement."

Thus, the Emergency Board stated in unmistakable terms that "There is no reason why a sharp line should be drawn on the last day of the month and provide that accumulated credit hours, including relief, should be paid as of the month just completed, thus perhaps putting that month in the premium payment class while abnormally lowering the credit hours for the succeeding month." In the instant claim, the Organization seeks to establish a line of demarcation at the end of a month to compel payment to Nissen of 4:15 hours in June although the days credited for the lap over trip performed by him extended into July.

The Company's proposal, which was recommended by the Emergency Board, was subsequently embodied in the working Agreement effective September 1, 1945, in substantially the same language as the Company proposal. The only material revision was to change the 8-hour daily credit to 7:30 hours to conform to the 225-hour monthly assignment recommended by the Board. The prorating provision of Rule 20 was not affected when the working Agreement effective September 1, 1945, was revised effective January 1, 1948.

CONCLUSION

The Organization's interpretation of the application of the prorating provision of Rule 20 finds no support either in the language of the working Agreement or in the intent of the provisions relative to prorating time. Since September 1, 1945, the Company has prorated service hours of lap over trips, including trips in urns with periodic relief, without protest by the Organization until the instant claim filed August 24, 1948. During this period, the working Agreement was revised on January 1, 1948, without effect on the provision of Rule 20 relating to prorating. In this connection, consideration should be given by the members of the Board to Award 2436, Third Division Docket No. CL-2215, in which Award, under **OPINION OF BOARD**, the Board held as follows:

"Where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. See Awards Nos. 507, 1257 and 1397."

The Organization's claim is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Conductor R. H. Nissen reported for assignment at 11:45 A.M., June 29th, and was released at 8:45 A.M., June 30th. His lay over expired at 11:45 A.M., July 1st. He was entitled to credit of two and one-third days and 19:15 hours. The carrier compensated him by crediting him for 7:30 hours on June 29th, 7:30 hours on June 30th, and prorating into July, 4:15 hours and a one-third day, which comprised a part credit for his next relief day on July 5th.

The Organization claims that this method of payment violated Rules 12 and 20. The parties agree that the pertinent provision is that part of Rule 20 which reads:

"Where the days credited for the last round trip (lap over trip) in the month extend into the succeeding month, the service hours of the trip shall be prorated by allowing 7½ hours' credit for each day credited in the month in which the trip was started (including day of departure if reporting time on such day was before Noon). The bal-

ance of the service hours of the trip shall be credited to the succeeding month."

The controlling provision must be analyzed in relation to the facts presented. The words used would define a "lap over trip" as being one "Where the days credited for the last round trip in the month extend into the succeeding month, . . ." The words of the Rule define the test as being whether "the days credited" extend into the succeeding month. (Emphasis added). The material portion of Rule 20 was embodied in the working agreement, effective September 1, 1945, as a result of a recommendation by an emergency board. This provision was presented as the Company's proposal to the Board, and in the transcript of the proceedings of the emergency board it is clear that the Organization understood the meaning of the proposal to be that in a situation where the service hours of the last trip performed by a conductor in full-time regular assignment would be prorated even though the conductor completed the lap over trip in the month in which he started.

The Organization's representative asked the following question and received the following answer:

"Q. Is it not a fact that the conductor in regular assignment, not part-time, who makes a round trip, a lap-over trip, will be credited under your proposal with eight hours for the day that he started in the month in which he started, but the other hours will be carried over into the succeeding month, although he completes his trip in the month in which he started it?

A. A full-time regular conductor, yes, Mr. Wise. I have already stated that where we thought rules were unfair to the Company, we have proposed changes in them."

The assignment commencing at 11:45 A.M., June 29th, was Nissen's "last round trip in the month." He was entitled to credit of two and one-third days for that trip and the "days credited" did "extend into the succeeding month" because one-third of a day was prorated into July. The contract makes no distinction between full or partial days but does provide for payment on a daily and hourly basis. The "service hours of the trip" were "prorated by allowing seven and one-half hours' credit for each day credited in the month in which the trip was started (including day of departure if reporting time in such day was before noon)." Credit for June 29th, was given because the reporting time on the day of departure was before noon and seven and one-half hours' credit was allowed for June 30th. After these credit allowances were made for June 29th and June 30th, there existed a balance of 4:15 hours. The balance of the service hours of the trip were "credited to the succeeding month."

The Organization states that the dispute involves the meaning and intent of the parenthetical clause, "(including day of departure if reporting time on such day was before noon)." The words used parenthetically clearly refer to the day of commencement of the lap-over trip. It would be a tortuous and unrealistic construction to consider it as referring to the starting time of the succeeding trip after the lap-over period. Such a meaning is not expressed in the rule and it cannot be found by any reasonable implication.

The carrier's method of payment finds full support in a literal reading of the language of the Rule. The words used are not ambiguous. Since the adoption of this language in 1945, the carrier has followed this method of payment without objection from the Organization. The present practice is not in conflict with Rule 20. It applies the Rule in precisely the plain meaning of the language used. The weight of the evidence is that this practice has been in existence for approximately three years and the Organization should have been aware of it. Awards 1257 and 1609.

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 Employee 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretray

Dated at Chicago, Illinois, this 25th day of May, 1950.