

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Order of Railway Conductors, Pullman System, claims for and in behalf of Conductor W. J. Schoeps, Chicago-East Dist., that The Pullman Company violated Rules 13 and 22 of the Agreement between The Pullman Company and its Conductors, when:

1. Under date of April 6-7, 1950, the Company deducted four hours time for rest en route when Conductor Schoeps was unable to obtain but two consecutive hours rest.

2. We now ask that Conductor Schoeps be credited and paid, under the applicable rules, for the two hours that were improperly deducted from his time on the nights of April 6-7, 1950.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in the service of The Pullman Company, dated September 1, 1945, revised January 1, 1948.

This dispute has been progressed in accordance with the Agreement. Decision of the highest officer designated for that purpose, denying the claim, is attached, as Exhibit No. 1.

The facts necessary to a determination of this dispute are, as follows:

Under date of April 6, 1950, Conductor Schoeps was assigned to Santa Fe Trains 3 and 4, designated as Line 45, Chicago to Los Angeles and return.

The "Operation of Conductor" Form covering Line 45, effective April 2, 1950, shows that the Conductor reports in Chicago first day, 7:30 P. M. and is released in Los Angeles 7:15 A. M. fourth day. Elapsed time 61:45 hours. Less relief en route 12:00 hours. Time on duty 49:45 hours. The Operation of Conductor form also shows that the Conductor, on the outbound trip, is scheduled to be off duty from 2:00 A. M. to 6:00 A. M. each of the three nights en route. Deductions for relief periods en route are made under the provisions of Rule 13, which reads, as follows:

"RULE 13. Rest Periods En Route. For regular and extra service movements (except extended special tours and one-way

OPINION OF BOARD: Claimant, a Pullman Conductor, brings this claim because of an asserted interruption of his rest period when a train conductor awakened him. It is undisputed that Claimant went off duty for his rest period at 2:00 A. M. and was undisturbed until 4 A. M. At that time Claimant asserts that he was awakened by the train conductor for a five minute discussion with respect to an accommodation occupied by a passenger which was not correctly shown on the railroad ticket pouch. There is some conflict in the record concerning the subject of that discussion, brought about by a letter involving the incident which letter Carrier obtained from the train conductor. However, that letter was obtained about six weeks after the incident and is equivocally worded indicating an understandingly hazy recollection on the part of the writer. We are, therefore constrained to resolve that conflict in favor of the Employees' version of the incident. Some question has also been injected with respect to whether or not the discrepancy in the railroad ticket pouch was caused by error on the part of the Claimant. However, that was effectively refuted by the uncontradicted testimony of the Claimant on the hearing held with respect to this grievance.

The determination of this claim turns upon the proper interpretation of Rule 13 of the Agreement between the parties, effective September 1, 1945, and revised effective January 1, 1948. Rule 13 provides for deductions for rest (on trips of twelve hours or more) when the spread of the trip includes the hours from midnight to 6 A. M. (during which hours the rest en route is to be confined) limiting said deduction to 4 hours for each night in regular assignment and to 4 hours for the first night and a maximum of six hours for each night thereafter in extra service. The rule then further provides in part pertinent to the resolution of this dispute as follows:

"No deduction shall apply to any release for sleep of less than two consecutive hours. When release for sleep is less than two consecutive hours, the conductor shall be paid for his full scheduled rest period. Any of the scheduled rest period not obtained shall be paid for at the hourly rate in addition to all other earnings for the month and shall be credited and paid in the payroll period in which the loss of rest occurred."

It is the contention of the Employees that from 4:05 to 6:00 A. M. the Claimant did not receive two consecutive hours of rest and therefore he is entitled to pay for that two hours. We are unable to agree with this contention of the Employees. The quoted paragraph of Rule 13 makes it very clear that no deduction may be made for rest unless within the scheduled rest period the conductor is afforded at least two consecutive hours of release for sleep. That was afforded to the Claimant. For any periods of time before or after those two consecutive hours have been afforded to him, any part of the scheduled rest period not obtained shall be paid for at his hourly rate. That is the clear, unambiguously expressed intent of the rule. It is apparent, from the record that Claimant obtained the one hour and 55 minutes of his scheduled rest period from 4:05 A. M. to 6 A. M. The part which he did not obtain was the five minutes from 4:00 A. M. to 4:05 A. M. for which we find that he is entitled to be paid in accordance with the formula established by the applicable pay rule. In that he has not been paid for that five minute period, the Carrier is in violation of the Agreement.

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 Carrier violated the Agreement to extent indicated in Opinion.

AWARD

Claim disposed of as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of November, 1951.