Award No. 6168
Docket No. PC-6016

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: Claim of the Order of Railway Conductors, Pullman System, for and in behalf of Conductor J. A. Schlinkert, Cincinnati District, that:

1. The Pullman Company violated Rules 36, 38, 24, 20 and 9 of the Agreement between The Pullman Company and its Conductors, when Conductor Schlinkert was sent out on another side of his run on SOU Trains 1-2 designated as Line 2228, between Cincinnati and Jacksonville, on January 7, 1951; Conductor Schlinkert was due out on January 8.

2. We now ask that Conductor Schlinkert be paid for his services, as provided in Rules 20 and 24, and held-for-service time, as provided in Rule 9.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in the service of The Pullman Company, dated January 1, 1951. This Rules Agreement will be considered a part of this Statement of Facts. Various rules thereof will be referred to as necessary, without quoting in full.

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 essential facts in this dispute are as follows:

Conductor Schlinkert holds seniority in the Cincinnati District as of July 20, 1918. He was regularly assigned to Southern Railway Trains 1-2 designated as Line 2228, operating between Cincinnati and Jacksonville, Florida. Copy of Operation of Conductors form in effect during first half of December, 1950 is attached as Exhibit No. 2. Copy of Operation of Conductors form in effect last half of December, 1950 attached as Exhibit No. 3.

During the month of December, 1950 Conductor Schlinkert made the trips as outlined on Schedule No. 1, see page 4, on dates specified, and was credited and paid as shown on that schedule, exclusive of late arrival.

By reference to Schedule No. 1, it will be noted that Conductor Schlinkert departed from Cincinnati on December 6th and 11th. He was credited

paid for services performed in the month of January, 1951, in the precise manner prescribed by Rule 20.

Paragraph (a) of **Rule 9. Held for Service** provides that a regularly-assigned conductor held at home station by direction of Management beyond expiration of layover shall be allowed hourage credit and pay up to 7 hours for each succeeding 24-hour period. Under the provisions of Question and Answer 7 of Rule 9 and Question and Answer 9 of Rule 24 a regularly-assigned conductor who is used in another side of his run is entitled to be credited and paid held-for-service time as provided in paragraph (a) of Rule 9 on return to home station after expiration of the layover of the side of the run on which he returned in order to return him to his own assignment or side of the run. The Organization's theory is that Conductor Schlinkert was used in other than his own side of Line 2228 on January 7 and is, therefore, entitled to held-for-service time in Cincinnati from the time of the expiration of layover accruing to the trip of January 7 until he again departed in service from Cincinnati on January 13. Since it has been shown that Conductor Schlinkert was not used in other than his own assignment on January 7 the inapplicability of Rule 9 in this dispute becomes apparent.

CONCLUSION

The record in this dispute supports the position of the Company. The Company has shown that it made a change in Line 2228 on January 1, 1951, and that Conductor Schlinkert operated in Line 2228 subsequent to January 1, 1951, in accordance with the operating schedule in effect for that operation and was paid for all services performed in accordance with the rules of the working Agreement. Although the Organization has contended that Management could not properly change Line 2228, effective January 1, 1951, it has offered nothing in support of its contention. The Company, on the other hand, has shown that the right to change conductor operations at any time in order to meet changing conditions is a Management prerogative and that the conductors have no cause for complaint when Management makes such a change, unless the changed operation in some way violates the rules of the working Agreement. None of the rules cited by the Organization in this dispute support the contention that Management could not properly change Line 2228 from a 5-1/2 to a 5-3/4 conductor run effective January 1, 1951. Actually, none of the rules cited by the Organization is even remotely concerned with the question of Management's right to change conductor operations. The Organization's claim is without merit and should be denied.

The Company affirms that all data submitted herewith in support of its position have heretofore been presented in substance to the employe or his representative and made a part of the question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: Claim is made in behalf of Cincinnati Conductor J. A. Schlinkert for 2-3/4 days' additional pay for January 1951 on the grounds that it is claimed he was used on his relief day, that is, between 8:15 P. M., January 7, 1951 and 8:15 P. M., January 8, 1951. Also for 7 hours' additional for each succeeding 24-hour period from 8:15 P. M., January 10, 1951 to 8:15 P. M. on January 13, 1951, because it is claimed he was held for service during this period.

The first and basic question presented by this claim is, did Claimant have the right to a relief day during the period from 8:15 P. M. on January 7, 1951 to 8:15 P. M. on January 8, 1951?

Claimant had a regular assignment in Line 2228, Cincinnati, Ohio, to Jacksonville, Florida, and return, a five and one-half Conductor run on SOU Trains 1-2. This line was in a Conductor operation effective December 15, 1950. This operation provided for additional relief at home terminal of

"1 day after 2 round trips". On December 28, 1950, at 8:15 P. M. Claimant began the first trip of a two-trip cycle under this operation. He completed the trip at 8:20 A. M. on December 31, 1950.

Under date of December 27, 1950, the Company posted a Conductor operation, including Line 2228, Cincinnati to Jacksonville and return in SOU Trains 1-2 superseding the one effective December 15, 1950. This operation established Line 2228 as a 5-3/4 Conductor run. It provided additional relief at home terminal of "1 day each after 2nd, 3rd and 4th round trip."

After Claimant had returned to his home terminal on December 31, 1950 he again reported at Cincinnati at 8:15 P. M. on January 2, 1951, and made the trip to Jacksonville and return, going off duty at Cincinnati at 8:20 A. M. on January 5, 1951. Was this trip, as the Organization contends, the second trip of a two-trip cycle performed under the Conductor operation put in effect as of December 15, 1950, or was it, as the Company contends, the first trip of a four-trip cycle under the Conductor operation the Company put in effect as of January 1, 1951?

Admittedly, Carrier has the right to make changes in Conductor operations at any time to meet changing conditions and the Conductors have no cause for complaint unless the change in some way violates a rule, or rules, of the Agreement.

Effective January 1, 1951, the Conductors' basic month was reduced from 225 to 210 hours of service. To meet the conditions brought about by this change the Company revamped all of its Conductor operations out of Cincinnati, which included the operation of which Line 2228 was a part. We find the conditions brought about by this change justified the Company's revamping its operations to prevent overtime and there is nothing in the rules of the parties' Agreement which prevented its doing so.

In this respect we have not overlooked certain cited instructions issued by the Company to the district offices and what is claimed has been the practice of the Company thereunder. But these instructions, which are not a part of any agreement, and the practice of the Carrier in accordance therewith created no rights which Claimant can have enforced. The Company could follow them if it desired but it was free to disregard them at any time it saw fit to do so and could do so without penalty.

Having come to the conclusion that the Company could make the change it did, effective January 1, 1951, it becomes self-evident that the round trip Claimant began on January 2, 1951 was not the second part of the two-trip cycle which he began on December 28, 1950, but the first trip of a four-trip cycle created under the changed operation, effective January 1, 1951. In other words, Claimant never completed the two-trip cycle he began on December 28, 1950 because of this change and, therefore, was never entitled to the relief day he claims was due him after the second round trip. What Claimant is entitled to is the relief provided by Rule 19, but that is not the claim here made. Consequently we hold the claim made to be without merit.

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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1953.