

Award No. 6624

Docket No. PC-6641

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE PULLMAN COMPANY

THE ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

STATEMENT OF CLAIM: "... claim of the Order of Railway Conductors, Pullman System, for and in behalf of Conductor J. P. Lynch of the Pennsylvania Terminal District in which we contend that The Pullman Company violated rules 9 and 22 of the Agreement between The Pullman Company and its conductors, when —

1. On December 28, 1947, Conductor J. P. Lynch, who was regularly assigned in Line 2606 between New York and Augusta, Georgia, departed from New York in his regular assignment but the return trip was terminated in Philadelphia at 7:30 A.M., and he deadheaded from Philadelphia to New York.

2. We now ask that Conductor Lynch be credited and paid, as provided in Rules 9 and 22 of the Agreement, 22:30 hours, or 7:30 hours out of each 24-hour period from 10:20 A.M. time of arrival in New York on December 28, 1947, to reporting time of his regular assignment at 1:15 P.M. on December 31, 1947."

The Organization made this claim a part of a controversy concerning changes in rules governing working conditions of Pullman conductors by including it in the subject matter of a strike ballot distributed on March 18, 1950, by the Organization to Pullman conductors.

The Pullman Company contends that (a) the trip between Philadelphia, the point at which PRR train No. 118 was turned, and New York City, the destination of the run, (during which period Lynch and his passengers were transported in parlor car and coach equipment) was service in regular assignment and was correctly credited and paid on that basis and (b) the QUESTION AND ANSWER STATEMENT COMPILED IN COLLABORATION WITH MR. WISE, dated January 14, 1946, supports the position of The Pullman Company.

OPINION OF BOARD: It is contended by the Organization that the real issue in dispute is the violation of Rule 9, Held-for-Service rule as interpreted by Awards 4007 and 4561. That at the time of the incident in question, Conductor Lynch of the Pennsylvania Terminal District, New York, held a regular assignment on PRR-Southern Trains 149-31 and 32-118 designated as Line 2606, New York to Augusta, Georgia and return. On

December 28, 1947, Train 32-118 was terminated at Philadelphia, and he was instructed to transfer his passengers to PRR Train 182, which he did, and proceeded to New York on Train 182, the Pullman cars in that train being in charge of a Boston District Conductor. Lynch was released from duty in New York at 10:20 A.M. December 28, 1947. The claim is for Held-for-Service time New York, December 28 to 1:15 P.M. December 31, 1947 when he next went out on his regular assignment, for seven and one-half hours for each 24-hour period.

It is claimed that Award 4007 established the principle that performance of a regular assignment consists of the performance of the bulletin and bid-in job as normally operated; that under the circumstances here prevailing, he was required to perform that same work in a newly created section of the same train which resulted in using him outside his assignment. On the assignment under consideration, Lynch was neither on Train 32-118 nor was he in charge of cars in Line 2006, nor any other cars. That in other words, he was in incompleated regular service and under Q. and A. 9 to Rule 9, is entitled to Held-for-Service time as claimed.

It is further claimed that Award 4561 affirms the principle established in Award 4007 and the facts are contended to be on the same basis as those here prevailing, i.e., as the result of an emergency.

Carrier contends that claimant originally correctly recorded his time for credit for completing his regular assignment plus credit for his late arrival until actually released from service in New York on December 28, 1947. That on December 31, 1947, claimant submitted a supplemental time slip showing service from Augusta to Philadelphia and as having deadheaded on a pass from Philadelphia to New York, claiming 22½ hours in being held-for-service. Carrier denies claimant was furnished a pass and that he deadheaded, Philadelphia-New York, contending that he operated through in regular service, Augusta-New York, and was properly paid the earnings of his regular assignment under Rules 6 and 20 for service performed December 27 and 28, 1947. That the Organization has not sustained the burden of proof necessary or sufficient for a sustaining award, citing Award 4011 with other awards of this Division. They also cite an understanding previously agreed to by the Organization under a similar factual situation, and Award 4441 involving the same type of incident and on the same date as the instant claim, and contend that distinguishing features prevail in this claim from cases considered in Awards 4007 and 4561.

Rule 6, Regular and Extra Service provides:

"Time for regular and extra service (except extended special tours and deadhead service) shall be credited from time required to report for duty until released, subject to the deductions provided for in Rule 13."

Rule 9 (a) and (b), Held for Service, provides:

(a) "A regularly assigned conductor held at home station by direction of the management beyond expiration of layover shall be allowed hourage credit and pay up to 7½ hours for each succeeding 24-hour period. An extra conductor held at home station by direction of the management shall be allowed the same hourage credit and pay."

(b) "A conductor in incompleated regular, extra, extended special tour or deadhead service (except in connection with witness service), held at a point other than his home terminal, may be held 15 hours without credit or pay from the time released from previous road service duty. If not used in road service at the expiration of the 15-hour period, he shall be allowed hourage credit and pay up to 15 hours for each succeeding 24-hour period."

Q-1 provides:

"What is incompleting regular service?

A-1. Service which is terminated at a point where no specified lay-over is established."

"Q-9. Shall a regularly assigned conductor be credited and paid held-for-service time on return to his home station, as provided in paragraph (a), when completing only a portion of the return trip of his regular assignment?

A-9. Yes, because there is no layover in the home station for incompleting regular service."

It is contended claimant was in incompleting service and under Q. and A.9 to Rule 9, is entitled to held-for-service time as claimed. Award 4561 holds under facts there presented in an emergency situation similar to that here that credit for held-in-service time was the proper method of payment.

Award 4441, also a similar situation occurring on the same day, relates to claim of an extra conductor of the Philadelphia District and the contention is made that the controversy was solved by applying the Understanding of Parties, in question and answer form, dated January 14, 1946, to the effect that when trains are turned en route, both the conductor returning home and the outbound conductor will go with his passengers in coaches or parlor car to complete the run. Also, in brief, that any assigned Pullman operation should continue to and from its point of destination although the equipment in which it was assigned was stopped and turned en route.

Also cited is Award 6168 by the same referee (Wenke) where it is pointed out that instructions as per question and answer statement is not controlling as the same could be followed or disregarded. Also in Award 6316, the instructions are termed "unilateral" as simply an explanation or interpretation of rules.

Under the factual situation here presented, we do not believe Award 4441 is controlling here. The situation there differs from that presented here in that, in Award 4441, there was no ruling on Rule 9 as to whether or not the same was to be applied when the conductor reached his home station and by the nature of the facts therein, it could be construed as a run-around. However, Rule 9 was construed in Award 4561, and we said there:

"There is no question but that the Company had a right to instruct him to continue in service with his passengers on the busses to Denver. Hence such travel was in service and not deadheading. However, whether such service was part of his regular assignment is dependent upon the Rules of the Agreement rather than the instructions of his superiors."

and after citing Award 4007:

"Under that authority his service in accompanying passengers on busses was not part of his regular assignment and hence he completed only a portion of the return trip on his regular assignment and is entitled to credit for held-in-service time in Denver under the Rules."

and

"* * * The alleged understanding refers only to trains 'turned en route', which is not the situation here, so it is inapplicable."

On the factual situation presented here, we reaffirm the finding made in Award 4561.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim for time held in service sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.