Award No. 7067
Docket No. PC-6784

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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 K. G. Holt, San Antonio District, that:

1. The Memorandum of Understanding Concerning Compensation for Wage Loss re-executed between the Company and its Conductors on December 20, 1950, and Rule 54 of the Agreement between the Company and its Conductors were violated by the Company on August 20, 1951, when the Company refused to compensate Conductor Holt for the full wage loss suffered by him as the result of the trip improperly withheld from him on June 30, 1951.

2. Conductor Holt be credited and paid for a deadhead trip Dunn, North Carolina, to San Antonio, Texas, less pay received for a deadhead trip Dunn to Richmond, Virginia.

EMPLOYES' STATEMENT OF FACTS:

I

On June 30, 1951, Conductor O. C. Glimp, San Antonio District, was given an assignment to Main 8542, San Antonio, Texas, to Dunn, North Carolina, in extra road service, thence Dunn, North Carolina, to Savannah, Georgia, in deadhead service.

Conductor Glimp proceeded San Antonio to Dunn.

Upon arrival at Dunn, Conductor Glimp was met by a representative of the Company who changed the destination of his assignment to "San Antonio, Texas."

Conductor Glimp proceeded Dunn to San Antonio.

II

On July 13, 1951, a claim was filed for and in behalf of Conductor K. G. Holt, San Antonio District, by A. W. Hyatt, Local Chairman, Division 741, Order of Railway Conductors, Pullman System. This claim alleged that the assignment given Conductor Glimp on June 30, 1951, properly belonged to Conductor Holt.

OPINION OF BOARD: On June 30, 1951, Extra Conductor O. C. Glimp was assigned to a service trip, Fort Sam Houston to Dunn, North Carolina, then deadhead Dunn to Savannah, Georgia. Upon arrival at Dunn, Glimp was directed to deadhead from Dunn to San Antonio. Carrier concedes that Claimant should have been assigned to this service trip. Carrier paid Claimant for a service trip, San Antonio to Dunn and a deadhead trip Dunn to Richmond, Virginia, the latter point having jurisdiction over Dunn. Claimant contends he should have been paid for a service trip San Antonio to Dunn and deadhead Dunn back to San Antonio. The claim is for this service less the amount the Carrier has paid him.

On December 20, 1950, the Carrier and the Organization entered into a Memorandum of Understanding concerning compensation for wage loss. The first part of this memorandum deals with compensation for a conductor cleared of disciplinary charges and states in part:

> "* * * that 'compensation for any wage loss suffered by him (the conductor)' means the wages which the conductor would have earned had he remained at work as a conductor without regard to any amounts he may have earned during the period he was not employed as a conductor."

This provision was followed by the paragraph which is controlling in the present case. It provides:

> "Similarly, it is understood that if a Pullman conductor presents a claim that he was not given an assignment to which he was entitled under the applicable rules of the Agreement, effective January 1, 1951, and that claim is sustained, he shall be paid for the trip he lost in addition to all other earnings for the month."

The use of the word "similarly" in the last cited paragraph clearly denotes an intent that a conductor wrongfully deprived of an assignment should be compensated on the same basis as a conductor cleared of disciplinary charges. In other words, he is to receive the wages he would have earned had he remained at work. We are of the opinion that the language of the controlling rule, when construed with the paragraph which precedes it, means that a conductor wrongfully deprived of an assignment shall be paid the amount he would have received had he filled the assignment.

The Carrier contends that the rule has been interpreted by the parties to mean that the compensation includes only the earnings of the outgoing portion of the run and does not include pay for deadheading back to the point of origin of the trip. The issue to be resolved is the meaning to be given to the word "trip" as used in the rule.

We have examined the Carrier's claim that there has been an agreed upon interpretation of this rule. We do not think that Carrier has established that such was the case by the weight of evidence. Example No. 1, cited by the Carrier, relates to a violation which occurred in 1948, a date prior to the Memorandum of Understanding here relied upon. The record indicates a complete misunderstanding between the parties as to the basis on which the violation was adjusted. Examples No. 2 and No. 3 were based on the manner in which claims were filed by the Organization and not on the basis of settlements made. Examples No. 4 and No. 5 do indicate that adjustments were accepted by the Organization on the basis of the formula urged by the Carrier. We do not think this evidence is sufficient to establish an agreed upon interpretation. Settlements of disputes are favored, and they will not be accepted as an agreed upon interpretation unless it appears that they were agreed upon over a period of time as the total amount due under the terms of the rule.

The evidence of the Carrier appears to be seriously impeached by testimony it adduced before a Presidential Emergency Board in 1950. This testimony is quoted in the Organization's submission in part a follows:

"Present Rule 53 (identical with Rule 54 in the current Agreement) and the Memorandum of Understanding, the combination of which is similar to the Organization's proposal, have produced inequities in claims pertaining to the application and interpretation of the rules of the Agreement. The most common of these inequities involved double payment of wages. This occurs when a conductor is not given an assignment to which he was entitled by virtue of his place on the extra board and is run-around by another conductor with more hours. Under the Organization's proposal the conductor who is run around would receive the wages accrued in the assignment he missed plus his other earnings for the same period."

The Carrier thereafter cited the claims of Conductor Byrne, filed on July 6, 1949, as an example, and then stated:

"He alleged that Rule 38 had been violated and that Conductor Byrne should be paid for all time accumulated by the Toronto conductor from the time Conductor Byrne was released at Suspension Bridge until the return of the Toronto conductor to his home station as provided by Rule 53 and the Memorandum of Understanding. The company acknowledged the violation of Rule 38 and accordingly paid Conductor Byrne for the hours that the Toronto conductor accumulated on the trip."

This evidence clearly indicates that the Carrier at that time was of the opinion that the rule contemplated payment for the service trip out and the deadheading back to conductors wrongfully deprived of an assignment. The contention that the foregoing quotes from the Emergency Board Proceedings were taken out of context is not well taken. The mere fact that the evidence was offered as argument to show certain alleged inequities in the rules does not have the the effect of changing the Carrier's stated concept of the meaning of the rule.

Carrier calls our attention to the Memorandum of Understanding concerning compensation to be paid when a Conductor is required and not used. It has no application to the present case where a conductor was wrongfully assigned and the penalty is payment for the trip lost. In the latter case, the payment for the trip lost is the amount paid to the conductor who made the trip. The trip lost in the present case is San Antonio to Dunn and deadhead back Dunn to San Antonio.

We think the Memorandum of Understanding is clear and unambiguous in its meaning. What we said in Award 6755 relative to past practice is applicable here. We there said:

"Finally Carrier relies on past practice. It must be conceded the record discloses some evidence along that line. The trouble here from its standpoint is that past practice does not preclude enforcement of the clear and unequivocal terms of an agreement requiring action contrary to the practice relied on."

We think the Memorandum of Understanding, properly construed, requires that a conductor who has been wrongfully deprived of an assignment shall be paid a sum equal to that earned by the conductor who was improperly given the assignment. An affirmative award is therefore required.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated that Chicago, Illinois, this 22nd day of July, 1955.