Award No. 7658
Docket No. PC-7954

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor R. E. Michau, Milwaukee District, that:

1. Rule 6, Question and Answer 2, and Rule 21, Question and Answer 1, of the Agreement between the Milwaukee Road and its Parlor Car Conductors was violated by the Company when the Company improperly amended Conductor Michau's Time Sheet for the second half of June, 1955, with specific reference to the trip performed by Conductor Michau on June 6, 1955, deadhead on Train No. 55 Chicago to Milwaukee, established release time 3:10 A. M. and extra road service on Train No. 24, Milwaukee to Chicago, established reporting time 7:00 A. M. Rules 7, 12, and 20 are also involved.

2. Conductor Michau's Time Sheets for the second half of June, 1955, be recomputed and this Conductor paid a minimum day for each of the above trips as required by the rules of the Agreement, specifically for 5:35 hours in addition to payment already received.

EMPLOYES' STATEMENT OF FACTS:

I.

On June 6, 1955, Conductor Michau was given an Assignment to Duty slip in extra service, pertinent portions of which directed him to proceed as follows:

a. Report in Chicago at 1:15 A. M. and deadhead to Milwaukee arriving at 2:55 A. M.

b. Release himself at 2:55 A. M. and immediately report for duty at 2:55 A. M.

case, not only because of the fact that Conductor Michau was not released from service at Milwaukee but also because Question and Answer 1 of Rule 21 specifically provides for the coupling of deadhead trips of less than 7 hours with extra road service trips, with such combined service being treated as a single movement. If, as the employes allege, certain provisions of Rules 6 and 12 have any application in this case, then those provisions cannot be so applied as to nullify the provisions of Rule 21, specifically Question and Answer 1 thereof. The provisions of all rules must be considered and when that is done, if Question and Answer 1 of Rule 21 is to have any meaning and application at all, then surely it is in a case such as we have here where the facts and circumstances are exactly as outlined in that Question and Answer.

The employes have cited Third Division Awards 6110 and 6493. However, it is the Carrier's position that the facts and circumstances in the case covered by Award 6110 differ materially by reason of the fact that in that case the conductor was actually released between the deadhead trips and the extra road service trips. That is not the case here. Conductor Michau was not released at Milwaukee. He was continuously in service and was not released from service at any time after starting the trip from Chicago at 1:15 A. M. until his release after arrival at 9:20 A. M. in Chicago.

Award 6493 can have no bearing whatever on the instant case. In the Opinion of the Board in that award reference was made to a Mediation Agreement as between the Pullman Company and its conductors. There is no such understanding or agreement between the parties in the instant dispute. We are here concerned only with the schedule rules between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and its parlor car conductors. We steadfastly maintain that Rule 21, written into the agreement, provided for and continues to provide for deadhead trips and extra road service trips being combined under the circumstances announced in Question and Answer 1 of that rule. To hold that a deadhead trip may be coupled with extra road service and such combined service treated as a single movement **only** when the period between the ending of the deadheading and the beginning of the extra road service amounts to not more than 15 minutes or 30 minutes, whatever the contention of the employes may be, can only mean the writing of an exception to Question and Answer 1 of Rule 21 which was not placed there by the parties. There is no justifiable reason why a conductor, who reports for duty at 1:15 A. M. and is released from duty at 9:20 A. M., should be paid in excess of 8' 05".

According to the contention of the employes we are to believe that if Train 24 had departed Milwaukee—say, at 3:10 A. M., and arrived Chicago at 9:05 A. M. and Conductor Michau had been released at 9:20 A. M., then it would have been permissible to combine the deadheading with the extra road service trip and the claimant would have been properly paid on the basis of 8' 05". However, according to the contention of the employes—with the only difference being the departure of Train 24 from Milwaukee at 7:30 A. M. rather than 3:10 A. M., with exactly the same number of hours and minutes being involved in the round trip, we are to believe that the proper payment is 13' 40". The Carrier does not agree that the schedule rules so provide.

There is no basis for this claim and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Conductor Michau (during a lay-over period in his regular assignment as parlor car conductor between Chicago and Minneapolis) was given an extra assignment on June 6, 1955 which required the following: Report at Chicago 1:15 A. M., and deadhead to Milwaukee; release 2:55 A. M. and report 2:55 A. M., Milwaukee for Train 24 to Chicago released at Chicago 9:20 A. M. For this combined service he was paid 8

hours and 15 minutes on a continuous time basis. He claims a minimum day for each trip.

The contention is that he was automatically released after arrival at Milwaukee because of established release time at that point for deadhead service; that in conformity with established reporting time at Milwaukee he was not required to report for Train 24 until 7 A. M., 15 minutes before reception of passengers.

Claimant argues that Rules 6, 7 and 12 of the Agreement as well as our Awards 1662, 4659, 6110 and 6493 support his position. The Carrier maintains that Rule 21, Question and Answer 1 justified it in combining the deadhead and extra service trips because he was not released at Milwaukee and no question of rest en route was involved. Claimant says Carrier's action was designed to circumvent the established release and reporting time at Milwaukee, and that this is shown by the fact that no service was required of claimant after his arrival at Milwaukee until his reporting time at 7 A. M. for Train 24.

Under Rule 6, entitled "Time for Regular and Extra Work", Q and A 2, it is provided that a conductor operating in extra service shall report for duty at the established uniform reporting time and be released after arrival at the uniform release time. Under Rule 7, entitled "Deadhead Service", Q and A 1, it is provided that the reporting and release time which attaches to deadhead service is the established reporting time at the point the deadhead trip started and the established uniform release time at the point where the trip terminated. Claimant also points to Rule 12, entitled "Rest Periods En Route", in which there appears a provision that a uniform reporting and release time shall be established for each station in each district. Established release time at Milwaukee is 15 minutes after arrival and reporting time 15 minutes before reception of passengers. Rule 21, entitled "6:50-Hour Minimum Payments", Q and A 1, read as follows:

> "Conductors in extra road service or deadheading on passes or with equipment or in combinations of any such services who perform less than 6:50 hours' service from reporting time until released shall be credited and paid not less than 6:50 hours, a minimum day.
>
> Q-1. Is it permissible to couple deadhead trips of less than 6:50 hours and extra road service and treat such combined service as a single movement?
>
> A-1. Yes, provided the conductor is not released between the different classes of service, and this combining of services is not used for the purpose of making a deduction for rest en route."

If claimant's position were accepted, Question and Answer 1 of Rule 21 would be meaningless. We are required to give effect to all provisions of the Agreement if it is possible to do so, and to reconcile seeming conflicts to the end that each provision may be given a reasonable meaning. Award 6856. We cannot assume that the parties engaged in a useless act in writing Q and A 1. It may not be disregarded. Awards 2864, 4322 and 6311.

We conclude that the Carrier correctly applied Q and A 1 of Rule 21 in combining these trips and compensating claimant on a continuous time basis. Rules 6 and 7 do not purport to prevent the application of Rule 21, Q and A 1, to the facts shown of record. As claimant's assignment to Duty was warranted under Rule 21, it cannot be said that Carrier unilaterally amended or annulled other rules of the Agreement as was held to be the case in Award 1662. Nor do we find that Awards 4659, 6110 and 6493 properly support this claim. Award 4659 interpreted Rule 38 of the Pullman Agreement in the light of a Memorandum of Understanding between those parties. Award 6110 involved coupling two road service trips in a round trip assignment which presented a different situation and was based on the principle of Award 4659. Award 6493 relied on a Mediation Agreement and thereby held Awards 4659 and 6110 to be controlling. An affirmative Award on the facts shown of

record would be tantamount to holding that the contracting parties impliedly intended established uniform and reporting times to modify or prohibit Carrier's authority to combine services under Rule 21. More specific language than can be found in the Agreement would be necessary to enable us to so hold. An affirmative Award on the facts shown is not permitted. See Awards 3754 and 6111.

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's action in this case will not be disturbed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.