

Award No. 9108
Docket No. PC-8976

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

**ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN,
PULLMAN SYSTEM**

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor R. R. Matthews, San Antonio District, that:

1. Rule 9 of the Agreement between The Pullman Company and its Conductors was violated by the Company in connection with the Time Sheets covering Conductor Matthews' services for the second half of June, 1954, with specific reference to credit for held-for-service at Laredo, Texas, during the period 8:30 A. M., June 27th, until 8:30 A. M., June 28th.

2. Conductor Matthews' Time Sheet for the second half of June be rechecked and this Conductor credited and paid as required by the rules of the Agreement, with specific reference to Rule 9 as applied to Conductor Matthews' time for June 27th-28th.

EMPLOYES' STATEMENT OF FACTS:

I.

At the time of this incident Conductor Matthews was a regularly-assigned Conductor operating on IGN Trains No. 21 and No. 22 designated as Line 3300, between San Antonio and Laredo.

On the outbound trip Conductor Matthews was released at Laredo at 5:25 P. M. and then entered upon a specified layover at that point.

This layover expired at 8:30 A. M. the following morning at which time Conductor Matthews was scheduled to report for the inbound trip.

On the inbound trip on IGN Train No. 22, Conductor, Matthews was in charge of two Pullman cars operating between Mexico City and San Antonio

2-8 involve the matter of payment of held-for-service at the home station, an issue which is not before this Board.

CONCLUSION

In this ex parte the Company has shown Conductor Matthews properly was credited and paid under the provisions of **Rule 20. Regular Assignments — Full Time** for June 27-28, 1954. Also, the Company has shown that the provisions of Rule 9 are not applicable to the facts of this case.

The claim in behalf of Conductor Matthews is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset we are met with the contention of the Carrier that:

"This claim is barred by the terms of Rule 51 of the agreement as interpreted by the parties."

A part of Rule 51 is cited:

"All claims shall be barred unless within one year from the date of said officer's decision * * * proceedings for the final disposition of the claim are instituted by the employe or his duly authorized representative. * * *"

It is urged that the foregoing language requires a submission to be filed with this Division of the Board within the time prescribed and that this has not been done by the Organization as to the claim here presented.

The question then is, have proceedings been instituted within contemplation of the rule vesting this Board with jurisdiction, namely, the right to consider and determine the claim asserted.

It is admitted that the Organization filed its notice of intention to file an ex parte submission of its claim with this Division of the Board within one year after the decision of the highest officer designated by the company to handle the claim. It did not file its formal submission — its written presentation of the basis of its claim, within the period provided by the Rule.

We find unanimity of decision that the filing of the notice, as was done in this claim, clothes this Board with jurisdiction to consider and determine it.

The time within which the parties shall observe certain formal procedural steps incident to consideration and decision of a claim is the prerogative of the Board to define. Jurisdiction and the condition under which it attaches is defined by the Rule.

The distinction is noted in Award 7813, this Division:

"In the latter case" (referring to Award 2325, Second Division) "the Board further concluded that the filing of a submission with the Board is not a jurisdictional step. With this we agree. This Board has had jurisdiction of the instant case since the Secretary received notice of intention to file the claim in 1954. * * * In short, what we now have before us is not a question of the Board's jurisdiction, but a question of the proper observance of its rules after jurisdiction is established. The Board makes its rules. It sets the limits for submissions. But these are subject to change, at the Board's discretion."

Reference is also made with approval to Award 2285, Second Division, of like tenor with the conclusion reached in Award 7813, supra.

The Carrier cites Awards 8889, 8886, 8797, 8383, 7144, 8564, 8686, 7655 and 6623, all of this Division.

Award 8889, held that jurisdiction of the Board did not attach, not because of failure to observe any time limit, but because the "claim was not made to the Agent" as required by a rule of the controlling Agreement.

Award 8886, properly held that question of the Board's right to entertain jurisdiction may be raised at any stage of proceedings. The provision of the rule here invoked with not under consideration.

Award 8797, announces the same principle as the opinion in Award 8886, but the decisive question related to another aspect of a Rule, the sending of written notice of rejection of the claim on the property, which it was held was a prerequisite to consideration of the claim by the Board.

Award 8383 was resolved on the proposition that written notice, as required, had not been given by the employe of his claim to the Carrier within the time fixed by the rule involved.

Without discussion of the other awards cited, suffice to say, we find none of them at variance with the decision of this Board in Award 7813, heretofore cited and discussed. All require the holding, that the filing by claimant of the notice with the Secretary of this Division of the Board, of an intention to file the claim under consideration vested jurisdiction in the Board to entertain it.

We come then to consider the claim on its merits.

Pullman Conductor Matthews was regularly assigned to IGN Train 21, Line 3300, 3301, on Tuesdays, Thursdays and Saturdays, from San Antonio to Laredo, Texas. His return trips, Laredo to San Antonio, were scheduled for Wednesdays, Fridays and Sundays. Monday was his relief day. The assignment here involved, provided that he be relieved of duty at Laredo at 5:25 P. M. and report for his return trip to San Antonio at 8:30 the following morning.

Conductor Matthews completed his run San Antonio to Laredo on Saturday, the 26th of June, and reported at the scheduled time for his return trip, Laredo to San Antonio, 8:30 A. M. the following day, Sunday, the 27th

of June. The Train 22, and the Pullman cars therewith which the Conductor was to operate on the 27th, were delayed in Mexico by a derailment and did not arrive at Laredo until about 8:30 A. M. Monday, the 28th of June.

Regular Train 22, with Pullman equipment to which Conductor Matthews was regularly assigned, not having arrived at Laredo, another Train 22 was made up, without Pullman equipment, and departed Sunday, the 27th of June, at the time the train delayed in Mexico had been scheduled for departure. Conductor Matthews did not leave with this train, but was held at Laredo until the delayed Mexican train arrived which then departed, but 24 hours after its regular schedule. Conductor Matthews then took over on Monday, the 28th of June and operated one of the Pullman cars which had been on the train on his regular trip, San Antonio to Laredo, on the 26th of June. Another regularly assigned Conductor operated two Pullman cars which were also attached to this train.

In support of the claim it is asserted that the Carrier violated Rule 9 (c) of the controlling agreement in failing to compensate Conductor Matthews for the 24 hours delay as held-over-time at the away-from-home station at Laredo.

The Carrier relies on Rule 20 of the Agreement and says that it properly refused the claim for held-for-service time; that the conductor was credited for the hours spent at Laredo on his monthly account as held-in-service time, caused by a "late train arrival" as contemplated by the rule.

Rule 9 (c) upon which the Organization relies reads:

"A conductor operating in regular assignment who is held at the away-from-home station beyond the specified layover of the assignment shall be allowed hourage credit and pay from expiration of layover up to 7 hours for each succeeding 24-hour period, except as provided in paragraphs (f) and (g) of this Rule. If the conductor arrives at the away-from-home terminal after the specified layover has expired, held-for-service time will start from time he is released."

It is conceded that (f) and (g) of the above Rule have no application to the facts here developed.

Rule 36, which the Organization claims should be read in connection with Rule 9 (c), provides:

"A conductor operating in regular assignment shall not be used in service outside his assignment except in emergency and as provided in paragraph (d) of Rule 38. * * *"

No emergency is claimed and (d) of Rule 38 has no application.

Rule 20, upon which the Carrier relies, reads:

"Regularly-assigned conductors shall be paid their respective established monthly wages on completion of a monthly assignment (which includes late train arrivals) of 210 credited hours or less, * * *"

If the time spent by the conductor at Laredo from 8:30 A. M., Sunday, June 27, to 8:30 A. M., Monday, June 28, may be included as necessitated by a "late train arrival" the Carrier correctly computed the wages, as a credit due the conductor. If not, then Rule 9 must be given application and the claim allowed.

In construing rules they should be, if possible, reconciled in meaning and it is to be presumed that they can be. Conflict is not intended and is to be studiously avoided. Nor should strained and unreasonable interpretation be given to the language of a rule.

Of course, "late train arrivals" as employed in Rule 20, in its broadest significance, could include any arrival of a train no matter how long delayed. Carried to an extreme, if Train 22 delayed in Mexico had not reached Laredo for a week after June 27th, it could be classified as a late train arrival. Such a concept is illogical and must not have been contemplated when the rule was drafted.

Was the train with Pullman equipment which came into Laredo 24 hours late, and after another train on the same run had been made up and departed for San Antonio, a late arrival under the rule invoked? We think not.

Conductor Matthews was a regularly assigned conductor on a regular away-from-home assignment at Laredo. His layover was from the conclusion of his trip on the 26th of June until the next morning, the 27th at 8:30. He was held at that away-from-home station for 24 hours after his layover. If this layover was because of a late train arrival, Rule 20 has application, but when the time had elapsed within which the Mexican train could depart from Laredo, as Train 22, and another Train 22 had been made up and departed, the "late train arrival" provision ceased to operate.

Carrier insists that Claimant while awaiting the return of the Pullman cars which regularly he would have serviced on the 27th of June, was held-in-service. The Organization says that he was held-for-service during the foregoing period.

As we have before indicated, it is our opinion, that when Train 22, without Pullman equipment, left Laredo on the morning of the 27th of June, the time when Conductor Matthews would have left with the equipment had it arrived, his held-in-service duty ceased and from that time on until he left Laredo he was held-for-service.

It should be noted that Conductor Matthews on a preferred run, was being held at Laredo beyond his assigned work day and caused to serve on his rest day and on a run to which he was not regularly assigned.

Carrier says that the train held up in Mexico, and which departed Laredo a day late, was neither annulled nor cancelled. This is true but the action taken by the Carrier in scheduling another train in its place on the 27th of June had the effect of discontinuing the scheduled run for Conductor Matthews for that day.

Carrier also cites Question and Answer to Rule 9 of the Agreement which has reference to (a) of the Rule which is not brought into effect in disposing of this claim.

The Memorandum of Understanding Concerning Annulment of Runs, of date December 20, 1950, page 86 of the Agreement, is cited by the Organization. We are not satisfied that it has application to the facts here developed. It reads:

"If an assignment in a run or a run does not operate for any reason for only one day, the conductor shall be credited and paid held-for-service time as provided in Rule 9."

But for Rule 9 (c), much can be said for the fairness of the manner in which the Carrier handled this claim for 24 hours extra time, inasmuch as Conductor Matthews, even with the allowance of this time as a credit, did not work 205 hours which was basic for the month and for which he was paid his monthly salary. However, we may not weigh the equities but must interpret and abide the rules which the parties themselves have drafted and enacted to control their employment and operational activities.

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 the Agreement has been violated as charged.

AWARD

Claim allowed; Conductor Matthews should be credited and paid for held-for-service time at Laredo, Texas for the period 8:30 A. M. June 27, 1954 to 8:30 A. M. June 28, 1954.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of December, 1959.