Award No. 10520
Docket No. PC-11909

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, 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. W. Strothman, Cincinnati District, that The Pullman Company violated the rules of the Agreement between The Pullman Company and its Conductors, with special reference to Rule 31 (f), when:

1. On June 12, 1959, Conductor Strothman was required to remain in Columbus, Ohio, for a longer period than is required under the rules of the Agreement.

2. Because of this violation we now ask that Conductor Strothman be credited and paid 5:40 hours' held-for-service time, as provided in Rule 9 of the Agreement. (We hold that Conductor Strothman should have 6:50 hours, but inasmuch as claim has been made for 5:40 hours, that is the amount of claim.)

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing an effective date of September 21, 1957, and amendments thereto on file with your Honorable Board, and by this reference is made a part of this submission the same as though fully set out herein.

II.

On June 6, 1959, Conductor R. W. Strothman was handed an Assignment to Duty Slip, reading:

"Report at Cincinnati 3:55 P. M. and depart at 4:10 P. M. DH to Columbus on PRR 78, release 10 minutes. Report Columbus 9:20 P. M. and make 6 round-trips in Line 6542 per itinerary (between Columbus, Ohio and Richmond, Indiana). Return DH to Cincinnati on bus June 12, 1959."

situations), is upon those who seek the allowances. We do not find that Claimants have established proof of a violation of Rule 13 in the instant case."

Similarly, in Award 5976, the Board, with Fred W. Messmore, Referee, denied the Organization's claim in the following pertinent language:

". . . The Employes have failed to meet the burden of proof which is on them with respect to Rule 6 of the Vacation Agreement; that, the Foreman of the gang, the workmen remaining on the job, were burdened during the period Fowler was on vacation, nor that Fowler was burdened upon his return from vacation."

Also see Third Division Awards 4758 and 6069.

Finally, numerous awards of the National Railroad Adjustment Board hold that the freedom of action of Carrier is restricted only by statutory action (Third Division Award 7715) and that Carrier has all managerial prerogatives not prescribed or limited by the Agreement or by law (Third Division Awards 6001 and 8218).

CONCLUSION

In this ex parte submission the Company has shown that the time spent by Conductor Strothman in Columbus beyond expiration of layover (9:05 A. M., September 12 - 4:25 A. M., September 13) was not authorized by Management, was in fact a violation of Company instructions. The Company also has shown that Conductor Strothman would have been entitled to be paid held-for-service time under the provisions of Rule 9 only in the event he was held at that point at the direction of Management, a condition not present in the instant dispute. Finally, the Company has shown that there has been no violation of any rule or rules of the Agreement and that Awards of the National Railroad Adjustment Board support the Company in this dispute.

The Organization's claim that Conductor Strothman is entitled to be paid 5:40 hours held-for-service time in addition to all other earnings for the month 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 representatives and made a part of the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In regard to the above Claim, Claimant was given an assignment to duty by Carrier as follows:

"Report at Cincinnati 3:55 P. M. and depart at 4:10 P. M. DH to Columbus on PRR 78, release 10 minutes. Report Columbus 9:20 P. M. and make 6 round-trips in Line 6542 per itinerary (between Columbus, Ohio and Richmond, Indiana). Return DH to Cincinnati on bus June 12, 1959."

The Claimant completed this assignment and was released at Columbus on June 12, 1959, at 8:35 A. M., but he did not return to Cincinnati by bus—although it is not disputed that busses were available that day at 9:50 A. M., 11:45 A. M., 1:55 P. M., 4:50 P. M., and 5:45 P. M. He waited until 4:35 A. M. the next day, June 13, and used the first train that he could deadhead on to Cincinnati.

It is the position of Claimant that he waited for the train because he was without funds to pay bus fare, admittedly in the amount of $4.05.

Claimant was paid deadhead time for the return trip to Cincinnati, and this claim is for "held for service" time in Columbus in addition thereto.

The Organization alleges that Carrier is in violation of Rule 31 (f) of the effective Agreement of the Parties and should be paid under Rule 9 thereof (the **Held for Service** provision).

The issue is whether Carrier **held** Claimant in Columbus on June 12, 1959. Since his staying there instead of taking a bus was contrary to the express directions of his assignment, if Carrier **held him** there such conclusion can be reached only by inference that Carrier's action (or inaction) created this result.

A study of the initial hearing of the grievance, which was transcribed, reveals that there is no issue as to the right of Carrier to have a Conductor deadhead by bus. There is no quarrel between the Parties in this regard. Moreover, it is not contended that Carrier was unwilling to pay bus fare, either in advance or by subsequent reimbursement.

Rule 32 (f) pertains to deadhead travel by train and does not refer to deadhead travel by bus.

It appears that occasional deadhead travel by bus came into existence by mutually acceptable custom and practice. At the hearing which was transcribed, the Local Chairman, who had had Conductor experience, stated in effect in regard to such bus travel, that he was sometimes paid in advance and occasionally reimbursed later.

At the hearing referred to above, it was not denied that Claimant could have obtained bus fare in advance from the District Office by sending a "collect" telegram request for it.

In view of these and other circumstances revealed by the Record, we must conclude that Claimant's stay-over in Columbus was of his own choosing and not due to the wishes or fault of Carrier.

Accordingly, this Claim should be denied.

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

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1962.