

Award No. 10824

Docket No. PC-11406

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, 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 that the Milwaukee Road violated Rules 6, 12, 18 and 19 of the Agreement between the Milwaukee Road and its Parlor Car Conductors, when:

1. Under the dates of October 8th and 9th, 1958, the Company ignored the provisions of Rule 12 of the Agreement and coupled the outbound service trip Chicago to Milwaukee with a deadhead trip Milwaukee to Chicago, on each of the dates involved.

2. For the two round trips involved Conductor Michau has been allowed 14:20 hours' credit and pay. We contend that he is due credit and pay of 27:20 hours; therefore, the claim is for a total of 13:00 hours' short pay.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of October 16, 1957 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.

For ready reference and convenience of the Board, the rules of the Agreement directly applicable to this dispute are quoted as follows:

"RULE 6. REGULAR AND EXTRA SERVICE.

"Time for regular and extra service, except deadheading, shall be credited and time required to report for duty at the uniform reporting time until released at the uniform release time, subject to the provisions of Rule 19."

Chicago to Milwaukee and the deadhead trip of less than 6'50" from Milwaukee to Chicago was proper in both instances and Conductor Michau was properly paid 7'10" in both instances for being continuously in service from the time of reporting at 8:00 A. M. to the time of release at 3:10 P. M.

The employees have referred to Rule 12 in support of their position in this case. The employees have argued, in effect, that Claimant Michau was automatically released at Milwaukee regardless of the fact that the assignment given to him provided for no release at Milwaukee. Rule 12, or any other rule for that matter, cannot be so applied as to nullify or set aside the provisions of Question and Answer 1 of Rule 19 which specifically provide that it is permissible to couple deadhead trips of less than 6'50" and extra road service under circumstances such as are present in the instant case. Numerous Board Awards have clearly indicated that all provisions of the contract must be considered and when that is done, if Question and Answer 1 of Rule 19 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.

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 employees and made a part of the question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was assigned extra road service on Train #27 from Chicago to Milwaukee and returning deadhead to Chicago on Train #16 on the same day. This same assignment was given to the Claimant on succeeding days.

The assignment to duty report sheets state "Report at 8:00 A. M. Train #27 From Chgo To Milw—At Milw At 10:35 A. M. Elapsed Time 2 H 35 M Less Rest Period—Credited Hours 2 H 35 M Report At 10:35 A. M. Train # D H 16 From Milw To Chgo Release At Chgo At 3:10 P. M. Elapsed Time 4 H 35 M Credited Hours 4 H 35 M Total Credited Hours For Entire Trip 7 H 10 M"

The same assignment form was issued on the second day and is similar except the term "Release" which refers to time at Milwaukee had not been blanked out.

The Carrier paid the Claimant for these two trips 7' 10" for each trip, whereas, the Claimant asserts that he is entitled to 27:20 hours for both trips, thus his claim is based upon his allegation that he was deducted 13 hours pay.

The Organization asserts that Rule 6, 12, 18 and 19 of the Agreement have been violated.

RULE 6. REGULAR AND EXTRA SERVICE.

"Time for regular and extra service, except deadheading, shall be credited from time required to report for duty at the uniform reporting time until released at the uniform release time, subject to the provisions of Rule 19.

“RULE 12. UNIFORM REPORTING AND RELEASE TIME.

“A uniform reporting and release time of not less than fifteen (15) minutes shall be established for each station in each district.

“RULE 18. EXTRA SERVICE.

“Conductors shall be paid at their respective established hourly rates for all hours credited each month for extra road service, deadhead on cars, deadhead on passes, station duty, witness duty, held for service, called and not used and all other non-road service. Time credited in excess of 215 hours each month shall be paid for at the rate of time and one-half.

“Q-1. What is ‘extra road service’?

“A-1. ‘Extra road service’ is any revenue-producing trip not covered by a conductor’s regular assignment.

“RULE 19. 6:50 HOUR MINIMUM PAYMENTS.

“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.”

The Employees assert that Rule 12 supports their position. We do not concur. We must give effect to the provisions of the contract in interpreting the same.

All of the provisions of the contract must be considered in order to determine the intent of the parties.

The factual situation set forth herein comes within the provisions of Rule 19; to decide otherwise would render it null and void.

The Claimant was not released in Milwaukee from different classes of service; his deadhead trip was less than 6:50 hours; the continuing of services was not used for the purpose of making a deduction for rest en route.

Because of the foregoing, the claim is denied, and further discussion is not warranted.

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 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 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 28th day of September 1962.

DISSENT OF LABOR MEMBER TO AWARD 10824, DOCKET PC-11406

Award 10824 is clearly in error. The Award holds that:

"All of the provisions of the contract must be considered in order to determine the intent of the parties."

Despite this affirmation, the Referee then proceeds to rend Rule 12 completely meaningless in the contract.

The Award erroneously states:

"The Claimant **was not released** in Milwaukee from different classes of service; . . ." (Emphasis his.)

The Record clearly indicates that Claimant **was** released at Milwaukee. Carrier's reproduction of their own time slips clearly shows:

"RELEASE at Milwaukee. AT 10:35 A. M."

In addition the majority apparently ignored completely Rule 33 and particularly Q & A 1 thereof which states:

"Q-1. What is meant by one-way trip?

"A-1. Any trip from reporting time to release time of conductor. **An exception to the uniform release time will be made in connection with a round trip where conductor is not released because of cars occupied by passengers or possessions, . . .**"

Rule 33 states the only exception to uniform release time (Rule 12). The entire agreement contains **no** exception to a uniform reporting time yet in the instant claim, claimant was required to report at 10:35 A. M. (which incidentally was the RELEASE TIME also) for a train due to

depart at 1:35 P. M., or in other words three (3) hours before the Departure of Train #16, instead of the **mandatory** Uniform Reporting and Release Time of Rule 12 which states unambiguously that:

“A uniform reporting and release time of not less than fifteen (15) minutes shall be established for each station in each district.”

The record clearly shows that at Milwaukee the Uniform **Reporting** and Release Time had been established at fifteen (15) minutes.

The Award is palpably wrong in upholding the actions of the Carrier and is proof of the correctness of Petitioner's statement that:

“Your Petitioner holds that the Milwaukee Road is attempting to nullify Rule 12 by direct circumvention. With reference to this Carrier action, your Petitioner would point out that your Honorable Board has held time after time that when there is a written rule covering a given situation in which a specific provision controls, deflection cannot be countenanced.”

For these and other reasons, dissent is registered.

R. H. Hack
Labor Member