

Award No. 11851
Docket No. PC-13876

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, 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 J. V. Thomson, St. Paul District that in computing his time for the first half of March, 1962, the company violated Rule 9 of the Agreement between the Pullman Company and its Conductors when it failed to credit and pay him held-for-service time as follows:

1. Conductor Thomson was in incomplected regular service, and was held in Spokane, Wash. on March 3, 1962, a point where no specific layover is established, for a period of 16:45 hours.

We claim that under the terms of Rule 9 (b) the Company could hold him in Spokane for 13:40 hours without credit and pay, and that he is entitled to be credited and paid for 3:05 hours' held-for-service time in Spokane.

2. Conductor Thomson reported in Spokane at 10:30 P. M., on March 3, to deadhead to St. Paul, and was released in St. Paul at 8:45 A. M., March 5.

3. We claim that Conductor Thomson is entitled to held-for-service time as provided in Rule 9 (a), from 8:45 A. M., March 5, the time he was released in St. Paul, until 6:45 P. M., March 13, when he was again scheduled to report for his regular assignment, or for a total of 61:30 hours.

EMPLOYES' STATEMENT OF FACTS:

I.

There is in full force and effect a collective bargaining Agreement (or Agreements), entered into by and between The Pullman Company, hereinafter referred to as Company, or Management, and the Order of Railway Conductors and Brakemen, Pullman System, hereinafter referred to as Employes, or Organization. Copies of these Agreements are on file with this Division of the Adjustment Board, and are by reference included in this submission as though set out herein, word for word.

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

All data submitted 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: Claimant was assigned on a train from St. Paul to Seattle, to Chicago and back to St. Paul. He left St. Paul in the evening on March 1, 1962, en route to Seattle. About 10:20 P. M., on March 2, 1962, the train was derailed in the vicinity of Granite, Idaho. After the passengers were taken off and the injured were cared for, Claimant and other members of the crew were deadheaded by bus to Spokane, Washington. While in Spokane he was given a physical examination and he later deadheaded to St. Paul where he was released at 8:45 A. M. on March 5, 1962.

Carrier paid Claimant 4½ days for the portion of the trip from St. Paul to Granite, Idaho, the place of derailment; 6:50 hours for the deadhead trip from Granite to Spokane; 3:05 hours held-for-service in Spokane; 20:30 hours for the deadhead trip from Spokane to St. Paul.

Petitioner contends that Claimant is entitled to an additional 61:30 hours held-for-service under Rule 9(a) from 8:45 A. M. on March 5, the time he was released in St. Paul, until 6:45 P. M. on March 13, 1962 when he again reported for his regular assignment as scheduled. Carrier contends that Claimant was not physically able to work during that period.

The pertinent parts of Rule 9 read as follows:

"Rule 9. Held for Service. (a) A regularly assigned conductor held at home station by direction of Management beyond expiration of layover shall be allowed hourage credit and pay up to 6:50 hours for each succeeding 24 hour period. An extra conductor held at home station by direction of Management shall be allowed the same hourage credit and pay.

* * * * *

Q-3. Shall a regularly-assigned conductor be credited and paid held-for-service time at his home station as provided in paragraph (a) when returning to his home station in other than his regular assignment?

A-3. Yes, except when conductor is returned from the opposite terminal on a train later than the one on which he was scheduled to return, but with Pullman equipment he would have handled on his regular train.

* * * * *

Q-9. Shall a regularly-assigned conductor be credited and paid held-for-service time on return to his home station, as provided in paragraph (a) when completing only a portion of the return trip of his regular assignment?

A-9. Yes, because there is no layover in the home station for incomplete regular service."

It is evident that Rule 9 is applicable if Claimant was physically able and available for service between March 5 and March 13, 1962. The facts on this issue are in dispute.

The record shows that in his time sheet for the pay period ending March 15, 1962, Claimant reported on the train wreck on March 2, 1962, his trip by bus to Spokane and then said: "Acct. injuries returned to St. Paul, leaving Spokane 11:30 P.M. 3/3." In Claimant's "Report of Unusual Incident" dated March 4, 1962, he said, in part, the following:

"We took a bus into Spokane and were quartered at the Redpath Hotel. We all took examinations at Sacred Heart Hospital. N. S. Hawkins was held there for observation. The rest of us took N.P. 26 home. We were all bruised, cut and shaken up severely and unable to work. Previous to the wreck we had been running at a dangerous pace. I noticed no slowing up of train coming into curve at railroad trestle. Appeared like brake failure. Diesel and train broke thru track at start of curve. Many passengers remarked to me after wreck that train was running so fast they were frightened. I sustained bruises on my right leg, head, back and both hands." (Emphasis ours.)

On March 8, 1962, Carrier's Superintendent filed a report of Claimant's injuries with the Industrial Commission of Minnesota describing Claimant's injuries as: "Bruised right leg, head, back and both hands." This is an identical description of Claimant's injuries as he reported on March 4, 1962. Although the record is not explicit, we must take judicial notice that Claimant had notice of this report. Under normal procedure, the Industrial Commission of Minnesota notified Claimant and a formal or informal exchange of correspondence or hearing is held.

That Claimant had such knowledge and information is supported by a "Final Receipt for Compensation" dated March 23, 1962, more than two weeks after Carrier filed the report with the Commission. This receipt signed by Claimant, in the presence of a witness, acknowledges that he received \$18.00 "in settlement and satisfaction of all claims for compensation or damages, subject to review as provided by Law, on account of injuries suffered by myself on or about the 2nd day of March 1962 while in the employ of The Pullman Company."

It is significant that the report to the Industrial Commission of Minnesota was made after Claimant had returned to St. Paul and during the period when he says he was physically able and available for service. The fact remains that if he was so physically able and was available for service he could have challenged Carrier's report before the Commission. And, more important, he did not need to accept the \$18.00 "in settlement and satisfaction of all claims . . ." Claimant is literate, he can read and write, no one compelled him to sign the "Final Receipt for Compensation."

All of this becomes most relevant because Petitioner first presented his claim to the Company on April 27, 1962, a month after the proceedings before the Industrial Commission of Minnesota was closed.

Petitioner contends that the "Final Receipt of Compensation" may not be considered because it was not presented at the hearing and this is new evidence. We do not agree. This receipt is directly related to the question whether Claimant was physically able to perform services between March 5 and March 13, 1962. The Company consistently raised the issue of Claimant's physical ability in all of the proceedings on the property.

The preponderance of the evidence in the record shows that Claimant was not able to perform services between March 5 and March 13, 1962.

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 Company did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.