Award No. 12673
Docket No. PC-14437

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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 Penn. Terminal District Conductor R. J. Vorburger, that The Pullman Company violated the rules of the Agreement between The Pullman Company and its Conductor, with especial reference to Rule 3, in computing Conductor Vorburger's time at the rate of over 10 to 15 years for time earned for the pay period ending March 29, 1960, and subsequent dates.

Conductor Vorburger was employed on August 28, 1944, and we hold that he should have been credited and paid at the over 15-year rate for time earned for the pay period ending March 29, 1960 and subsequent pay periods until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the 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.

I.

The seniority roster for the Penn. Terminal District conductors, dated January 8, 1960, which is posted in the Conductors' Room as provided in Rule 26 of the Agreement, shows that Conductor Vorburger was employed on August 28, 1944.

Rule 3 of the Agreement between The Pullman Company and its Conductors reads as follows:

> RULE 3. Applying Progressive Rates of Pay. Authorized leaves of absence of 30 days or less, time absent because of sickness, time solely employed on work of the Order of Railway Conductors and Brakemen, time served in a promoted position with the Company, and, effective September 1, 1945, time spent on furlough of 90 days

In other words, the rule is specific in setting forth what periods of time shall be credited in computing total active service for the purpose of determining the proper step rates of pay and the rule lends no support to the Organization's contention that time spent on suspension should be credited as active service.

Finally, it should be noted that the instant dispute involving Conductor Vorburger is a key case and that there is at least one other case lined up behind it for disposition on the basis of this decision.

CONCLUSION

In its ex parte submission the Company has shown that the doctrine of laches is applicable to this case in view of the Organization's unreasonable delay in progressing the dispute to the Third Division, National Railroad Adjustment Board. Also the Company has shown that Rules 3 and 1 lend precise support to the position of Management in this case. Further, the Company has shown that the facts in this dispute are compatible with the facts decided by denial Award 2452 of the Third Division, which Award denied the claim of the Organization that service period means the entire period since the employe entered the service. The Award held firmly that the parties meant to measure the value of service actually prformed and to compensate it accordingly under the provisions for progressive rates of pay.

The claim in behalf of Conductor Vorburger is completely without support of the rules of the Agreement; it is without merit; and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts in this dispute are not in issue. The Claimant was employed as a conductor on August 28, 1944 and would have completed fifteen years of continuous active service as of August 28, 1959, except for an authorized leave of absence of sixty-one days in 1949 and a period of one year and six months from April 2, 1951 to October 2, 1952 when he was in a discharge status. The Claimant was dismissed from service by the Carrier for cause and subsequently reinstated with seniority unimpaired under our Award No. 5863. We found that the discipline imposed was excessive and unreasonable under all the circumstances and mitigated the penalty. However, we also held " * * * that his record should not be cleared of the charge nor should he be compensated for any loss of wages."

There is no dispute between the parties concerning the sixty-one day leave of absence in 1949 which must be deducted in computing service with the Carrier under the applicable provisions of the Agreement which are as follows:

"Rule 1. (a) Rates of Pay. The following rates of pay shall be applicable to all conductors employed by The Pullman Company: Effective November 1, 1957.

Service Periods	Rates Per Month	Rates per Hour
First Year	$496.15	$2.4202
Over 1 to 2 Years	506.15	2.4690
Over 2 to 5 Years	513.65	2.5056
Over 5 to 10 Years	521.15	2.5422
Over 10 to 15 Years	524.15	2.5568
Over 15 Years	529.15	2.5812

"Rule 3. Applying Progressive Rates of Pay. Authorized leaves of absence of 30 days or less, time absent because of sickness, time solely employed on work of the Order of Railway Conductors and Brakemen, time served in a promoted position with the Company, and, effective September 1, 1945, time spent on furlough of 90 days or less shall be counted the same as active service in applying progressive rates of pay. Separate periods of leave of absence or furlough shall not be cumulative when service intervenes."

The sole substantive issue to be determined is whether or not the period of one year and six months during which time the Claimant was suspended from work should be counted as "active service" in computing his progressive rate of pay, under Rule 1 of the Agreement.

The Carrier contends that the instant claim should be barred under the doctrine of laches which finds its genesis in equity. There is no question that the claim as duly processed through the highest appeals officer of the Carrier and neither the Agreement between the parties nor the Railway Labor Act has been violated because of the interval of time that lapsed between final denial by the Carrier and the submission of the dispute to this Division. No evidence was offered of any undue burden on the Carrier and we hold that the claim is not barred. Award 6921.

Both parties agree that Rule 3 of the Agreement is controlling in this dispute. Petitioner asserts that Rule 3, which lists certain authorized absences that are credited to employes in establishing progressive rates of pay, by intent and construction also establishes periods of time which will not be considered in such computations. Petitioner notes that forced disciplinary absences arising out of suspensions or improper discharges are not mentioned in Rule 3, and contends that such periods of time were not contemplated by the parties under this provision of the Agreement. Therefore, it concludes that the Claimant, who was reinstated with seniority unimpaired should be credited with the period of one year and six months in question for the purpose of establishing his progressive rate of pay just as he was credited with sufficient "continuous service" to be eligible for a three weeks vacation under the vacation agreement between the parties.

Carrier contends that the position of the Petitioner is based upon the erroneous premise that Rule 3 of the Agreement includes all the conditions that will not be counted when a conductor is away from work. It argues that Rule 3 is controlling over the application of progressive rates of pay established in Rule 1 and that "service periods" listed in Rule 1 are not synonymous with seniority as is implied in the position of the Organization.

Carrier cites Award 2452 in support of its position which the Organization contends is not applicable because it was rendered under a prior agreement and dealt with the subject of "furlough" time. We have compared the language of Rules 1 and 3 contained in the Agreement in effect at the time Award 2452 was rendered with that contained in the current Agreement between the parties and find such language to be identical, except for changes in the progressive rates in Rule 1 and the addition of other authorized absences in Rule 3 as time credited in the computation of "active service," including time spent on furlough of 90 days or less. This prior award between the same parties specifically upheld the basic contention of the Carrier that Rule 3 contained the only exceptions to the requirement that "active service" only shall be counted for longevity pay purposes under Rule 1 of the controlling agreement. Therefore, all other inactive service not specifically set

forth in Rule 3 was excluded as not contemplated within the purview of the Rule. In this connection, we find significant the fact that the parties subsequently agreed to the expansion of Rule 3 to specifically include "furlough" time up to ninety days in the future computation of active service under Rule 1 of the Agreement. Such action strengthens the contention of the Carrier that only the items contained in Rule 3 are to be counted as the same as "active service" and that the inclusion of additional exceptions is a matter of negotiation between the parties. Awards 2326, 5079 and others.

Petitioner quotes only a portion of Section 1(c) of the Vacation Agreement between the parties in support of its contention that the same criteria should be applied in determining Claimant's progressive rate of pay as those applied in determining his earned vacation rights. We have noted that the part of section 1(c) not quoted by Petitioner pertaining to service "on not less than 2400 days" or payment for a total of 2400 days "or 16,395 hours" contains the basic qualifying requirements for three weeks vacation. The term "continuous employment" as found in Section 1(a) of the Vacation Agreement connotes cumulative service over a period of years since the original date of employment and seniority here is a most important element in determining vacation rights. The criteria for computing vacation periods after fifteen years of "continuous service" are clearly distinguishable from those that must be met to establish a higher progressive rate of pay based on "active service."

In view of the foregoing, the claim must 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 there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1964.