

Award No. 13768

Docket No. PC-15151

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, 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, Milwaukee District, that:

1. Rule 50 of the Agreement between the Milwaukee Road and its Parlor Car Conductors was violated by the Company on March 30, 1964, when the Company, in proffering settlement for the assignments improperly withheld from Conductor Michau on January 23-24 and January 26-27, 1964, refused to pay the full amount due him under the rules of the Agreement.

Rule 8 (a) is also involved.

2. Conductor Michau be credited and paid 12:00 hours' held-for-service time under applicable rules of the Agreement in addition to those sums already paid to him in connection with the assignments improperly withheld from him on January 23-24 and January 26-27, 1964.

EMPLOYES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, revised April 9, 1962, 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.

On January 23 and 26, 1964, the following assignments existed which the Milwaukee Road, under the existing Agreement, was required to fill:

- (a) Road service on train 15, Chicago to Minneapolis, January 23.

3. * * * to the regularly-assigned parlor car conductor designated by the local chairman.

There are not any provisions in Appendix B to include held-for-service time, as the employees would like your Honorable Board to believe.

Your Board has ruled many times in the past that its duties are to apply the rules as they have been written by the parties, and not to look beyond the language of a rule when it is plainly and unambiguously expressed.

In this case Appendix B could not be any more clearly or unambiguously expressed — “* * * payment * * * for such trip.”

Previous Awards of this Division have also ruled that your Board is not empowered to change, modify or write new rules. In Award No. 3633 of this Division you said:

“Paragraph (c) thereof provides a fixed and specific penalty for failure to place the successful bidder on his assignment. Where the Agreement fixes one penalty, this Board may not add an additional nor different one.”

In Award 6860 we find:

“In the instant case we have a specific rule dealing with a specific penalty. To assess any additional penalty upon this Carrier would be beyond the authority of this Board as prescribed by the Railway Labor Act, as amended.”

It is the Carrier's position that in view of the foregoing, the instant claim is entirely devoid of merit, not supported by schedule rules, agreements or past practice, and we respectfully request the claim be denied.

To sustain this claim your Board would have to change or modify Appendix B of the currently effective Agreement. This, your Board is not empowered to do.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 23, 24, 26 and 27, 1964, because of unavailability of the regularly assigned conductor, vacancies existed in parlor car service between Chicago and Minneapolis. No extra conductor was available on any of those four days.

It is Petitioner's position that Claimant, a regular parlor car conductor, was entitled to the extra road service involved on January 23, 24, 26 and 27. On those days, Claimant was in Chicago on regular home terminal layover.

Carrier did compensate Claimant for the four trips in question, but has not paid the held-for-service time to which Petitioner insists he is entitled under the terms of the applicable Agreement. The difficulty with Petitioner's contention is that the Agreement, in its Appendix B, is most specific regarding circumstance and penalty and, therefore, takes precedence over the general rules of the Agreement. Appendix B states that “if parlor cars are operated without a conductor in violation of the Agreement”, the Carrier “will not assert an inability to place a conductor on cars because of non-availability.” The provision then goes on to prescribe that “When an extra parlor car

conductor is not available, payment (at the straight-time rate) for such trip shall be made in addition to all other earnings for the month to the regularly-assigned parlor car conductor designated by the Local Chairman."

The language of Appendix B is direct and clear. It provides the only formula for situations where an extra parlor car conductor is not available and parlor cars are operated without a conductor.

In the present case, since no extra parlor car conductor was available, payment was made to Claimant, the regularly assigned conductor designated by the Local Chairman, for each of the four trips mentioned in the claim in addition to all his other earnings for the month. This was strictly in accordance with the requirements of Appendix B to the Agreement.

The parties must be governed by the Agreement to which they have committed themselves, and since Appendix B is controlling in this matter, the claim will 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 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 Claimant is not entitled to held-for-service pay.

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 July 1965.