Award No. 13955

Docket No. PC-15202

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 H. N. Chancey, Penn Terminal District, that the Agreement between The Pullman Company and its Conductors was violated, with especial reference to Rule 9 (a), when:

1. Conductor Chancey was not allowed held-for-service time from 12 noon, November 17, 1963, to 1:25 P. M., November 21, 1963, in accordance with the terms of Rule 9 (a), a total of 28:45 hours.

2. We now ask that Conductor Chancey be credited and paid under the provisions of Rules 9 (a) and 22 for held-for-service time as outlined above.

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.

Conductor H. N. Chancey, Penn Terminal District, on the dates involved in this claim, was regularly assigned to PRR Train 149-Sou-A&WP-L&N 37 outbound, and Train L&N 98-38-A&WP-Sou-38-PRR 118, inbound, between Penn Terminal Station, N.Y., and New Orleans, La.

Conductor Chancey reported in Penn Terminal, N.Y., for his regular assignment on November 13, 1963, at 1:25 P. M., and was scheduled to be released in New Orleans at 7:50 P. M., November 14.

Conductor Chancey had a 24:25-hour layover in New Orleans. He reported in New Orleans for his return trip at 8:15 P. M., November 15; scheduled to receive passengers at 8:30 P. M.; depart at 9:00 P. M., scheduled to be released in New York on November 17, at 8:15 A. M. Conductor Chancey was scheduled to handle, out of New Orleans, the Pullman cars operating in lines listed below, as follows:

Line 6872—New Orleans—New York
Line 6864—New Orleans—New York
Line 6878—New Orleans—Washington
Line 3198—New Orleans—Cincinnati

in the Conductor Chancey case. It follows, therefore, that Conductor Chancey was correctly paid in November, 1963, for the service that he performed as a Pullman conductor. Finally, the Company has shown that awards of the National Railroad Adjustment Board uniformly hold that the burden of proof rests upon the claimant, which requires that the claim must be supported by facts and not by mere assertion and conclusions.

Since it has been shown that no rule of the Agreement required the Company to pay Conductor Chancey the alleged held-for-service time claimed for by him, the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant conductor was regularly assigned to Line 6864, New York-New Orleans. Outbound Line 6864 was carried on trains PRR-149, Sou.-A&WP-L&N-37; inbound on trains L&N-98-38, A&WP-Sou. 38, and PRR-118.

On November 13, 1963, Claimant left New York in his regular assignment and was released in New Orleans at 8:15 P. M., November 14. He was scheduled to depart on L&N train 98-38 at 9:00 P. M. on November 15, but because of a derailment occurring on the L&N, that railroad annulled and did not operate its train 98 until the following morning (November 16). Two of Claimant's four Pullman cars were switched out and placed in Southern Train 42 scheduled for departure at 9:00 P. M. November 15. Because of the switching delay, Southern 42 did not actually depart New Orleans until 9:25 P. M.

Claimant handled the two Pullman cars via the Southern and Pennsylvania Railroads to New York City, arriving there at 11:45 A. M. November 17. He was released from duty at 12 noon that date.

Claimant filed a claim under the held-for-service provisions of Rule 9 of the Agreement which was properly progressed to this Board.

The basic position of the Employes appears to be that Claimant having been required to work off his regular assignment was entitled to held-for-service time claimed under Rule 9 and certain cited prior settlements between the parties purportedly recognizing the validity of such claims.

The Company's defense rests primarily upon the applicability of Question and Answer 3 of Rule 9 to the facts of record here.

Rule 9 (a), and Question and Answer 3 thereto, read:

> "**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 the 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 trains."

The facts establish that Claimant was a regularly-assigned conductor; that he was returned from the opposite terminal in other than his regular assignment as an extra conductor with a part of the Pullman equipment he would have handled on his regular train; that the train he returned on to his home station arrived there later than the one on which he was scheduled to return.

The Board finds that Question and Answer 3 of Rule 9 are applicable and controlling under the foregoing facts. The language of the rule does not lend itself to the interpretation sought by the Employes that the scheduled departure times of the trains involved is the governing factor. When it speaks in terms of a "later" train it means a train returning to the home terminal which arrives there later than the train the conductor was scheduled to return on. The fact that both trains were scheduled to depart at the same time is not pertinent; the controlling fact is the time of arrival of those trains at the home station.

Moreover, the Employes' citing of past settlements as interpretive and controlling of the intended application of Rule 9 in similar circumstances is not persuasive, particularly in view of the testimony taken at the hearing of this dispute on the property where the key settlement case was clearly distinguished on its facts from the instant case. As to the other settlements relied upon, there is no evidence of record establishing the factual circumstances alleged to be similar or identical to those present here. All that is shown is that they were paid. The Board therefore, cannot determine whether or not they apply.

In view of the foregoing, the Board holds that under the material facts of record here, Question and Answer 3 of Rule 9 are controlling and dispositive of the issue presented. The claim will, therefore, 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. Schultz
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November, 1965.

LABOR MEMBER'S DISSENT TO AWARD 13955, DOCKET PC 15202

The Award is erroneous on two counts.

The "Opinion of the Board" states:

> "The facts established that Claimant was a regularly-assigned conductor; that he was returned from the opposite terminal in **other than his regular assignment as an extra conductor** with part of the Pullman equipment he would have handled on his regular train; that the train he returned on to his home station **arrived there later than the one on which he was scheduled to return." (Emphasis ours.)**

The record conclusively shows that no contention was advanced by either party that the **arrival time at the home station was, in any way, determinative of the dispute involved.** Chancey, the Claimant, was returned to his home terminal as an **extra conductor** filling an assignment which consisted of performing service over an **entirely different route** and **railroad,** therefore, question and answer 3 to Rule 9 is inapplicable to the particular situation herein involved. The injection of this new argument is improper, especially so when it is admitted by the majority that Claimant was operating **as an extra conductor** and **outside of his regular assignment as well.**

The majority erroneously states:

> "The Board finds that Question and Answer 3 of Rule 9 are applicable and controlling under the foregoing facts. The language of the rule does not lend itself to the interpretation sought by the employes that the scheduled departure time of the trains involved is the governing factor. Where it speaks of a 'later' train, it means a train returning **to** the home terminal **which arrives** there later than the train the **conductor** was scheduled to return on. The fact that both trains were scheduled to depart at the same time is not pertinent; the controlling fact is the time of arrival of those trains at the home station."

Nothing could be further from the facts and the intentions of the parties as expressed in the record. The eventual arrival of a "later train" to the home terminal has absolutely no significance in the application of the rule. It is well-known by both parties that all **assignments,** whether extra or regular, are made to conform to the scheduled departing time of the train involved as set up by the railroad. The Pullman Company has absolutely no authority insofar as railroad schedules are concerned, hence, the rules of the Agreement between it and the Organization are based upon the scheduled departure time of a train and not upon the time of its eventual arrival time at its destination. It logically follows that the majority's statement that:

> "The fact that both trains are scheduled to depart at the same time is not pertinent; . . . . ." is untenable.

And secondly, the majority chose to ignore the Petitioner's Exhibits "C" and "D" in the record in which it was shown that settlements had been made at the local level for held-for-service time in situations identical to that herein.

I dissent.

H. C. Kohler, Labor Member
Third Division NRAB