

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Ex Parte submission Brotherhood of Railroad Trainmen, Southern Pacific (Pacific Lines) in the claim of Steward A. J. Andrews and others (Stewards L. C. Dettor, N. P. Gray, J. F. Craig, J. Johnson and W. C. Charleton) that extra service performed during the month of July, 1936, be paid for and in addition to full monthly earnings made by his (or their) regular assignment."

POSITION OF EMPLOYES: These claims arise under Rule No. 2, the Rates of Pay and Rules Covering Hours of Service and Working Conditions of Dining Car Stewards, effective July 1, 1936.

It is a well recognized principle that regularly assigned men, who at the instance of the Carrier perform extra service or services, shall be paid therefor in addition to their regular assignments. This is especially true in those services which are controlled by money monthly guarantees. These stewards are in this category and the General Committee stresses the point that this principle is well safeguarded in Section (b) of Article 2 of the current agreement; also, the basis of pay for extra services is provided for in Section (d) in conjunction with Section (c) of Article 2.

The General Committee respectfully brings to the Board's attention that the regular assignment of Steward Andrews and others was in excess of 240 hours per month which fact obviates any necessity for extra service to make up a monthly guarantee deficiency. It is then apparent that the position and contention of the Committee is proper that the extra service performed should be paid for in addition to the full monthly earnings of the assignments.

POSITION OF CARRIER: The claims as presented by the Petitioner as stated in letter by the Secretary of the National Railroad Adjustment Board, Third Division, dated at Chicago, Illinois, Jan. 22, 1937, are not in accordance with the claims as handled with the Carrier by the Representatives of the Claimants; that is, the claims were heretofore predicated on a certain basis and, without written notice to the Carrier, a change was made to a different basis and the Carrier was not given an opportunity to discuss the claims on the changed basis.

The use of stewards in extra service was necessary due to the fact that no extra qualified stewards were available at the time such extra work developed and the Carrier had no alternative other than to use those stewards in order to meet the requirements of the service. This situation was caused by the fact that an unusually large number of moves developed during the month in question due to the Shrine Convention in Seattle, Washington.

On account of the necessity for using stewards named in this submission in extra service during July, 1936, their earnings exceeded the amount which would have accrued had they remained in their regular assignments, with usual layovers at home terminal.

There is in evidence an agreement between the parties, effective July 1, 1936. A number of the rules of this agreement were cited by the Employees as sustaining their claim in this case. Paragraphs (a) and (b) of Rule 2 particularly were relied upon and are quoted below:

"Rule 2.

(a) Two hundred and forty (240) hours or less will constitute a month's work for regularly assigned Stewards who are ready for service the entire month and who do not lay off of their own accord. Regular assignments will, when practicable, not exceed 270 hours per month; such excess hours (above 240) will be paid for at straight time rate, in addition to monthly wage.

(b) A regular assigned Steward will not be required to perform extra or special service unless there is no extra qualified Steward available. A Steward temporarily detached from his regular assignment at Company request, shall not suffer wage loss."

OPINION OF BOARD: The evidence before the Board establishes that the claim submitted herein by the Petitioner is not the same claim submitted to the Carrier and discussed on the property. The claim submitted to and discussed with the Carrier was that regularly assigned stewards used in extra or special service during their usual layover periods were entitled to receive pay for sixteen hours for each such twenty-four hour period.

The claim in this docket is that regularly assigned stewards used in extra service shall be paid for extra service in addition to the full monthly earnings made on their regular assignments. In support of the claim submitted, the Petitioner cites various rules of the Agreement.

In the opinion of the Board Rule 2, paragraph (b), is the rule applicable to situations of the kind here involved. This rule covers two distinct conditions:

1. A regularly assigned steward will not be required to perform extra or special service unless there is no extra qualified steward available.
2. A steward temporarily detached from his regular assignment at Company request shall not suffer wage loss.

The Carrier submits that in this case there were no extra qualified stewards available when regularly assigned stewards were used for extra service. This statement is not challenged by the Petitioner nor did the Petitioner deny or attempt to refute the statement of the Carrier that there were no extra qualified stewards available at the time these stewards were used in extra service.

The statements of the parties are in conflict as to what constituted the regular assignments of the stewards involved in this case during the month of July, 1936. Their statements are also in conflict as to the earnings of the stewards in regular assignments and the earnings which were allowed for extra or special service.

In view of the conflicting statements by the parties as to the regular assignments and the earnings in the regular assignments of each of the stewards involved, as well as the earnings in special and extra service during the month and the fact that the claim submitted by the Petitioner is not the same claim handled on the property, the Board rules that the dispute should be remanded to the parties in order that they may determine what constituted

the regular assignment of each of the stewards involved, what earnings were secured in the regular assignments and what earnings were secured in the extra or special service.

If the combined earnings for the entire service performed by each of the stewards involved in this case in July, 1936, were less than they would have earned had they remained on their regular assignments, they would be entitled to the difference between what they actually earned and what they would have earned in their regular assignments. If the combined earnings for the month were equal to or in excess of what the earnings would have been in regular assignments, the Board rules that they suffered no wage loss and have been properly compensated under Rule 2 (b).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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 dispute should be remanded to the parties for conference and negotiations in line with the above opinion.

AWARD

Claim remanded in line with the above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 15th day of December, 1937.