

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

**DINING CAR COOKS AND WAITERS INDUSTRIAL
ASSOCIATION**

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: "Claim of Curtis Thompson (Waiter) for nine and eighty/100 (\$9.80) Dollars as a penalty payment for overtime service performed in the month of March, 1936."

EMPLOYEES' STATEMENT OF FACTS: 1. The employe involved in and making this claim is Curtis Thompson, a waiter employed in the dining car department of the Missouri-Kansas-Texas Lines. This dispute arises out of the application of Article Two of the Agreement between the respective parties which reads:

"Number of hours as designated in regular assigned schedule will constitute a month's work, as per appended schedule marked 'A'."

and Article Three of the said Agreement which reads:

"Not less than four days or multiples thereof off duty each calendar month will be allowed at designated home terminals."

2. Curtis Thompson worked a total of 310 hours in the month of March, 1936, which was a thirty-one day month and for which he was paid a monthly rate of \$69.00, without overtime allowance of any character.

POSITION OF EMPLOYEES: "On August 26, 1935, the Superintendent of dining car service addressed a letter to the General Chairman, and among other things in the letter, advised that,

'Maximum hours, thirty day month—300; thirty-one day month—310;'

The effect of this advice from the Superintendent of dining car service was to interpret Schedule 'A' so as to establish a basic day of 10 hours for each calendar month. Article Three of the Agreement reads:

'Not less than four days or multiples thereof off duty each calendar month will be allowed at designated home terminals.'

"Since the Carrier had, by interpretation, established 10 hours as a basic day, and 300 or 310 hours as a basic month, Article Three of the Agreement must therefore be taken into consideration to determine what, in fact, is contemplated by the Agreement in the establishment of a basic number of hours per month that will constitute a working month.

"It is the position of the employes that Article Three of the Agreement reduces the working time in a thirty day month to twenty-six days, a calendar

Using the above assumptions, the claim may be stated as follows:

10 hours per day—30 days	300 hours
Less 10 hours per day for all but four relief days specified as minimum in agreement—26x10	260 hours
Leaves	40 “
which at overtime rate of 24½¢ per hour specified in addendum No. 2 for \$69.00 rate (C. Thompson's rate) 40 x 24½¢—	\$9.80

AS TO ASSUMPTION NO. 1:

Addendum No. 1 to the agreement sets forth the agreed amounts **per month**, for the different classifications and the rates are now and have always been so paid, whether the month contains 28, 29, 30 or 31 days.

We can find no basis for assuming that 30 days is to be considered as applying for all months.

AS TO ASSUMPTION NO. 2:

Nowhere in the working agreement is there any basis for such an assumption. The monthly rates are paid irrespective of the fact that the number of relief days may actually be in excess of four. In Thompson's case the days off were eight.

AS TO ASSUMPTION NO. 3:

The only possible basis for this assumption is a voluntary action on the Carrier's part in limiting the total number of hours in a month, beyond which overtime would be paid. This is something not required by the agreement, but as there is no disposition to require these employees to work an excessive number of hours in a month for which only the monthly rate would be allowed the carrier voluntarily adopted the practice of paying overtime for those hours in excess of 300 hours in a 30-day month; or 310 in a 31 day month.

This in no sense justifies reading into the agreement a basic ten hours for each individual day.

We submit that there is nothing that can be found in or reasonably read into the above mentioned articles, nor any other part of the agreement or addenda thereto which specifies directly or indirectly any such bases as petitioner has assumed.

Attention is called to award No. 39 (DC 41) of this Division on a submission of this petitioner which apparently had for its object what is now sought in this case. In that docket, question (a) was:

“(a) The Board is requested to determine the maximum number of hours provided for in schedule marked (a) which is attached.”

and the award was:

“(a) Decided to be variable as comprehended in Article 2 of the agreement cited.”

There is in evidence an agreement between the parties bearing effective date of February 1, 1927. Articles 2 and 3 thereof (before quoted) are relied upon by the employees in support of their claim.

OPINION OF BOARD: A careful examination of the agreement and the evidence fails to sustain the employees' contention that it was contemplated that the four days rest per month provided by Article 3 of the agreement is

to be deducted from the schedule "A" of assignments which the monthly pay covers. In fact an analysis of the hourly rates provided for the computation of overtime indicates the contrary, as those rates are apparently a composite average of the hours of all the runs specified in the assignments divided by the crews and thirty days without any allowance for the four days. In other words, if the intention was as claimed by the employees these hourly rates would be about one-seventh more than they are.

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 employee 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 does not contemplate deducting the rest days from the assignments.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1938.