

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Ex parte submission of the Brotherhood of Railroad Trainmen, in claim of Steward Hans Volkmer for 97½ hours time plus \$30.00 expenses for period off regular assignment."

EMPLOYES' STATEMENT OF FACTS: "Steward Volkmer was regularly assigned to Trains Nos. 69 and 70 between Los Angeles and San Francisco, and on July 7, 1937, reported for duty at Los Angeles for service on Train No. 69. After the dining car had been stocked and during time waiter members of the crew were setting same up for service, Steward Volkmer had occasion to reprimand Waiter Frank Anderson in the performance of his duties. Anderson thereupon approached table where Steward Volkmer was engaged in clerical duties and committed an assault and battery upon him. Other members of the crew called the railroad police department, whereupon Special Agent took Steward Volkmer to Company doctor under whose care he remained for the next ten days in the healing of the injuries sustained. At time of the above occurrence Waiter Anderson had been arrested nine times, and otherwise had an unsavory police record.

"Claim was made by Steward Volkmer for 97½ hours time lost during the ten days plus \$30.00 expenses for food and lodging account being away from his home, which was subsequently declined."

POSITION OF EMPLOYES: "This case arises under Rule 20 of Agreement covering pay and regulations for Dining Car Stewards, reading:

'Investigations and Discipline

Rule 20.

(a) When a Steward is taken from his run for investigation of an alleged offense, he shall, if found innocent, be paid for net wage loss. No discipline will be assessed without a thorough investigation; such investigation ordinarily to be held within five (5) days from date of removal from service.

(b) Where a formal investigation is held, the Steward under investigation will be entitled to representation by the Local Chairman of his organization or by any employee in service on the Steward's seniority roster, or both.

(c) Stewards will be given written notice of investigation, and the subject to be investigated, together with the time and place to be held. Message will be considered written notice.

under the stewards' agreement, the carrier is not obligated to provide sleeping or other accommodations for stewards, except during lay-over periods at 'away-from-home' terminals. Even if there were some obligation to provide accommodations, it would obviously be limited to their actual cost. On November 8, 1937, claimant submitted a personal expense account, in the sum of \$9.00, covering hotel and lodging during the nine days July 7th to 16th, inclusive, at Los Angeles; a photostat copy of that expense account being in evidence as Carrier's Exhibit B. No statement has been submitted to indicate how the total of \$30.00 expenses has been arrived at, or to explain why a claim originally amounting to only \$9.00 has been expanded in correspondence to the sum now demanded.

"CONCLUSION

"We emphasize again that this claim presents no dispute or grievance within the meaning of Section 3 of the Railway Labor Act; and that it is therefore wholly outside of the jurisdiction of the Adjustment Board. Apart, however, from the question of jurisdiction, the claim is obviously without merit; for the carrier cannot, under the controlling decisions, be held liable for the willful or unlawful acts of an individual who, though an employe at the time, was obviously acting wholly outside of the scope of his employment. The carrier therefore asks that, subject to its conclusions as to its jurisdiction, the Division should make findings corresponding to those suggested in the text of this submission, and should deny the claim accordingly."

There is in existence an agreement between the parties bearing effective date of July 1, 1936.

OPINION OF BOARD: Since Steward Volkmer was not taken from his run for investigation of an alleged offense nor disciplined in any way, Rule 20 of the Agreement, upon which the claimant appears to rely, is clearly and obviously inapplicable to the facts herein presented.

Essentially, as was recognized when the matter was handled on the property, this claim represents an effort to collect damages for personal injury resulting from the altercation between the steward and his fellow employe. Such claims are neither covered by the Agreement nor within the purview of the authority of this Board as established by the Railway Labor Act. Accordingly, without prejudice as to the merits of the controversy and without opinion as to the legal rights of the claimant in the proper forum, this claim must be dismissed for want of jurisdiction.

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 employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That the Board is without jurisdiction over the dispute involved herein.

AWARD

Claim dismissed for want of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of May, 1940.