

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 Brotherhood of Railroad Trainmen in claim of Steward W. C. Charlton for additional compensation February 3, 8 and 13, 1939, account time lost from regular assignment."

EMPLOYES' STATEMENT OF FACTS: "Steward Charlton was one of four Stewards regularly assigned to Trains Nos. 87 and 88, and his regular turn was due out of Oakland Pier, February 3rd, 8th and 13th; however, a fifth steward from the extra board at Oakland Pier was placed into this set of runs which caused Steward Charlton's turn to be set back twenty-four hours following each of the above dates, or a departure from Oakland Pier on February 4th, 9th and 14th. This, accordingly resulted in a loss of time from his regular assignment for which claim was made, and subsequently declined."

POSITION OF EMPLOYES: "This case arises under Rule 2 (c), Stewards' Agreement, reading:

'For regularly assigned runs time will be counted as continuous on each trip from time required to report for duty until released from duty at home or lay-over terminal, set-out or turning point, subject to deduction of eight (8) hours each night enroute, between 9:30 P. M. and 5:30 A. M., except that where Steward is required to remain on duty after 9:30 P. M., overtime will be allowed therefor on actual minute basis at pro rata rate.'

"Steward Charlton was on a regularly assigned run together with three other regularly assigned stewards, and the conditions of this assignment required him to report for duty at Oakland Pier each date February 3rd, 8th and 13th, 1939; therefore, the Committee maintains that because an extra steward was used on this assignment these dates which set back Steward Charlton twenty-four hours through no fault of his own, he is entitled to time counted as continuous from time extra man required to report for duty each trip and used in his stead, until he (Charlton) was actually released from duty at layover terminal twenty-four hours behind his regular turn in accordance with rule quoted above.

"The Carrier has been fully apprised of the Committee's position as herein stated, and accordingly, the Board is respectfully requested to find in favor the claimant and so award."

as stocking cars, stripping cars, transferring or checking supplies, will be paid for actual time at pro rata rate with a minimum of four (4) hours.

'Note—Hourly rate determined by dividing the applicable monthly rate by 240.'

"It cannot be sustained by Stewards' Current Agreement nor by past practice that there is any fixed and inflexible definite layover period and it is and has been the practice to place extra crews in runs at intervals in order to keep the earnings of the regular stewards between the minimum of 240 hours and the maximum of 270 hours as provided for in Rule 2 (a).

"As hereinbefore stated in 'Carrier's Statement of Facts,' Steward W. C. Charlton would have exceeded the 270 hours specified as the maximum, when practicable, in Rule 2 (a), similarly the other stewards in this run would have exceeded 270 hours per month; the carrier therefore placed extra stewards in the run in question so that the time worked by assigned stewards would not exceed 270 hours per month.

"All of the provisions of the agreement have been strictly adhered to by the carrier and it submits that the rules of the Agreement do not permit of an interpretation such as must be placed thereon by this Board if the Petitioner's claim is sustained and it would result in time allowance for service not actually performed.

"CONCLUSION

"1. The carrier requests the Board to deny the claim for the reason that it is not sustained by the Stewards' Current Agreement and that an award in favor of the claimant would change the working conditions and established practices under that agreement.

"2. All data herein submitted has been presented to the duly authorized representatives of the employees.

"3. The carrier requests the privilege of oral hearing."

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

OPINION OF BOARD: Steward Charlton's claim for additional compensation on the specified dates is based on the assumption that the bulletin under which his regular assignment was made constituted a guarantee that he would be used on each of the four-day runs involved, in rotation with the other three regularly assigned stewards, without interruption, throughout the month. That bulletin, which satisfied all the bulletining requirements of the Agreement, did not expressly establish any such guarantee, although it might conceivably have been subject to such an interpretation if it were not for the provisions of Rule 2 (a) of the Agreement. This rule provides that "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," and that "regular assignments will, when practicable, not exceed 270 hours per month." This assignment as construed by the claimant, would not only have fully satisfied the 240-hour minimum, but would necessarily have exceeded the 270-hour maximum. Recognizing this fact, the claimant concedes that the carrier might properly have used extra stewards in order to keep his service within 270 hours, but insists that the extra stewards could be properly so used only toward the end of the month, when additional runs by the regularly assigned stewards would carry their totals beyond the 270-hour limit. The claimant's contention, then, which thus abandons his theory as to the meaning of the bulletin, comes essentially to this: that the carrier has no discretion in the adjustment of layovers for the purpose of giving effect to the

270-hour rule. Such a contention finds no support in the Agreement. The zone between 240 hours and 270 hours is open to flexible adjustment by the carrier, in the interest of the service as well as of all the employes involved. The extra stewards here used were assigned to their runs with these purposes in view and in conformity with the rules of the Agreement. Since, then, no right of Steward Charlton was infringed upon by the carrier's procedure, and he in point of fact worked 258 hours during the month involved, his claim must be held to be without merit.

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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the evidence of record does not disclose any violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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