

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

CHICAGO & NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim for differential in earnings May 4 to 11, 1939, inclusive, based on provisions of Rules 17 and 18, Dining Car Employees' Agreement, for the following men:

R. Hildebrandt	—	Steward
Frank Shinka	—	Chef
A. Heideman	—	Third Cook
C. Kelch	—	Second Cook

Also for differential in earnings May 6 to 14, 1939, inclusive, for

A. Hill	—	Chef
L. LaJeunesse	—	Second Cook"

EMPLOYEES' STATEMENT OF FACTS: "The above-named men were assigned to their respective extra boards at Chicago and on May 4, 1939, a 'Banker's Special' passenger train was operated Chicago to Oakland, California, returning to Chicago May 11th. Instead of using Steward Hildebrandt, Chef Shinka, Third Cook Heideman and Second Cook Kelch in dining car service on this special passenger train the steward, chef, and third cook who were regularly assigned to dining car on passenger trains Nos. 516-517, and second cook regularly assigned to dining car on trains Nos. 11-87-88, were taken off their regular assignments and used in extra dining car service on the 'Banker's Special' passenger train, and extra dining car men Hildebrandt, Shinka, Heideman and Kelch were used in dining car service on the regular assignments in place of the men taken off for service on the special.

"After return of the 'Banker's Special' passenger train to Chicago on May 11th the dining car men used thereon were returned to their regular assignments, resulting in Hildebrandt, Shinka, Heideman and Kelch claiming differential between what they earned in service in place of the regular assigned men and what they would have earned had they been used on the 'Banker's Special,' based on provisions of Rule 17, Dining Car Employees' Agreement of March 1, 1938, which was declined by the Carrier.

"Likewise Chef A. Hill and Second Cook L. LaJeunesse were assigned to their respective extra boards at Chicago and on May 6, 1939, an 'Omaha Booster's Special' passenger train was operated Chicago to Omaha, returning to Chicago May 14th. Instead of using Chef Hill and Second Cook LaJeunesse in dining car service on this special passenger train the chef and second cook who were regularly assigned to dining cars on passenger trains Nos. 401-400 and 153-406 were taken off their regular assignments and used in extra dining car service on the 'Omaha Booster's Special' passenger train

'When regularly assigned men are taken off their assignment for extra train service, they will be compensated on basis of service performed, with a minimum allowance of what they would have received on their regular assignment.'

which rule fully sustains the right of the railway company to use regularly assigned men for service on special trains, as was done during the periods May 4 to 11, 1939, and May 6 to 14, 1939, respectively.

"Rule 7 of the above referred to agreement, captioned—'EXTRA MEN'—deals with question of compensation to be allowed extra men, and provides:

'Extra men will be paid for actual service performed on the following bases:

'(a) When relieving a regularly assigned man will receive the same time compensation such regular man would have received, the total time allowance to all men on an assignment to be not less than the minimum month.

'(b) When used in extra service, will be compensated for actual time worked with a minimum allowance of eight hours for each day used.'

Section (a) of the above quoted rule specifically provides that extra men when relieving a regularly assigned man will receive the same time compensation such regular man would have received, and in consideration of the fact that the claimants in this case were each and every one allowed the time compensation which would have been earned by the men whom they relieved during the respective periods involved, it is the position of the railway company that they have been properly compensated for service performed May 4 to 11, 1939, and May 6 to 14, 1939, respectively, and that claim for additional compensation as presented to this Board cannot be sustained under provisions of rules contained in agreement between the railway company and the Order of Railway Conductors applicable to the classes involved."

There is in existence an agreement between the parties bearing effective date of March 1, 1938.

OPINION OF BOARD: This claim is submitted on behalf of employes on the extra board, and its disposition must be governed by the rules of the Agreement which apply to extra men. Rule 17, upon which the claimant relies, deals with the filling from the extra board of short vacancies in regularly assigned runs, and with the relative rights of the men on the extra board in the premises. It is conceded that the vacancies in the regular assignments here involved were filled from the extra board, and without contention that the men on the extra board were improperly treated as between themselves; and it appears, further, that the extra men were properly paid in conformity with the requirements of Rule 7 (a). Rule 18, also relied upon by the claimant, deals with assignments following the bulletining of positions, and hence is not applicable to the situation here involved. No rule of the Agreement has been cited which prohibits the transfer of regularly assigned employes, with their assent, to dining cars in special train operation, followed by the filling of the short vacancies thereby created by the use of employes from the extra board. This has been the long-established practice of the carrier, and its propriety is confirmed by Rule 13, the only rule of the Agreement dealing expressly with extra train service, which provides that "when regularly assigned men are taken off their assignment for extra train service, they will be compensated on basis of service performed, with a minimum allowance of what they would have received on their regular assignment." The conclusion is unavoidable, therefore, that the men on the extra board, as well as the regular employes, were assigned and compensated under the circumstances of this proceeding in conformity with the rules of the Agreement.

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 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 5th day of June, 1940.