

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Dining Car Steward Otto Weikert, for 29 hours, 26 minutes time lost from his regular assignment, Dec. 20 to 27, incl., 1936."

EMPLOYES' STATEMENT OF FACTS: "On the dates shown in the 'Statement of Claim,' claimant was regularly assigned as steward on New Orleans-Birmingham run, trains Nos. 1 and 4.

"Dec. 20 to 27, incl. Steward Weikert was taken from his regular assignment and used on the Montgomery-New Orleans run to relieve Steward Dalier.

"Below is shown time earned and paid for on the emergency assignment, and what he would have made on his regular assignment.

| Date | Hours worked and paid for on Montgomery-New Orleans Run. | Hours the regular assignment made, Birmingham-New Orleans Run. | Difference |
|----------|--|--|-----------------|
| 12-20-36 | 10' 20" | 13' 10" | 2' 50" |
| 12-21-36 | 13' 10" | 13' 10" | — |
| 12-22-36 | 5' | 13' 41" | 8' 41" |
| 12-23-36 | 13' 10" | 13' 50" | — 40" |
| 12-24-36 | 5' | 13' 27" | 8' 27" |
| 12-25-36 | 14' 17" | 13' 10" | over run 1' 07" |
| 12-26-36 | 5' | 12' 53" | 7' 53" |
| 12-27-36 | 12' | 14' 02" | 2' 02" |
| | | | 30' 33" |
| | | Less over run | 1' 07" |
| | | Difference..... | 29' 26" |

Claimant claimed 29 hours, 26 minutes difference which was declined by the Carrier."

POSITION OF EMPLOYES: "Employees quote the following rules in support of the claim:

Dining Car Steward's Agreement:

Rule 2. Hours of Service and Overtime.—'(a) Two hundred and forty (240) hours or less will constitute a month's work for regularly assigned stewards ready for service the entire month and who lose no time on their own account. Stewards temporarily de-

"The present claim is for 29 hours 26 minutes in addition to what he was paid as shown above, which claim the carrier declined."

POSITION OF CARRIER: "Exhibit 'AA' leaves it unquestionable that Weikert suffered no loss of pay; in fact, he earned \$10.54 more than he would have earned had he remained on his regular assignment throughout the entire month.

"Rule 2 (a), quoted above, provides a **monthly** basis of compensation, a guarantee of 240 hours, which necessarily is cumulative through the month. Rule 2 (b), providing for the payment of overtime when on duty 'in excess of 240 hours,' and Rule 12 (a), listing the agreed **monthly** pay rates applicable to the various regular runs or assignments, show conclusively that the guarantee against loss of pay applies to the **whole month** and not to any particular day or days during the month. The provision of Rule 2 (a) that 'Stewards temporarily detached from regular assignment by the Company shall not suffer loss of pay' permits the Carrier to detach a steward from his regular assignment for any number of days within a month, even without pay for those days on which he performs no service, provided he is paid for the entire month in accordance with the guarantee. Had claimant been held out of service the entire month the most he would have been entitled to would have been the hours of his regular assignment, 255 hours and 9 minutes. As it was, he actually made 269 hours and 36 minutes, which was more than he would have made had he not been detached from his regular assignment. This was within 24 minutes of the maximum of 270 hours prescribed by Rule 2 (a), yet, the Employees are contending for 29 hours and 26 minutes more time than claimant actually worked.

"Carrier's position is supported by Award 549 of this Division issued December 15, 1937. That award concerned the claim of a steward on the Southern Pacific under an agreement provision reading:

'A steward temporarily detached from his regular assignment at company request, shall not suffer wage loss.'

"The last paragraph of the 'Opinion of Board' reads as follows:

'If his combined earnings for the entire service performed by him in August, 1936, were less than he would have earned had he remained on his regular assignment, he is entitled to the difference between what he actually earned and what he would have earned in his regular assignment. **If his combined earnings for the month were equal to, or in excess of what his earnings would have been in the regular assignment, the Board rules he suffered no wage loss and has been properly compensated under Rule 2 (b).'**' (Emphasis added.)

"This claim is without foundation and should be denied."

There is in existence an agreement between the parties bearing effective dates of Aug. 1, 1936 (Rules), and Oct. 1, 1937 (Rates of Pay).

OPINION OF BOARD: Since the record and rules here, sufficiently set forth above, so parallel the records and rules examined and analyzed in existing Awards, and which we are disposed to regard as controlling, reference to those precedents suffices for exposition and decision. We believe the claim is without merit. See Awards 549, 550, and 1099.

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 Employee 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 a violation of the agreement does not appear.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1940.