

Award No. 2060

Docket No. DC-2144

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, 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 Dining Car Steward A. J. Andrews, et al., operating on Trains 14 and 21 (Oakland-Carlin) and 20 and 17 (Oakland-Gerber) for earnings on Trains 20 and 17, in addition to guarantee on Trains 14 and 21 from October 16, 1940 to May 11, 1941, inclusive.

EMPLOYEES' STATEMENT OF FACTS: For a period of two years prior to October 16, 1940, a pool of Dining Car Stewards operated on Trains 14 and 21, Oakland Pier-Carlin, as follows:

- 1st day—Reported at Oakland Pier, Train 14, 6:30 A. M.; arrived Carlin 12:15 A. M.
- 2nd day—Departed Carlin Train 21, 5:15 A. M., arrived Oakland Pier 9:00 P. M.
- 3rd day—Layover and repeat.

7½ trips per month with all layover at Oakland Pier, the home terminal.

In September 1940, the carrier posted a bulletin (No. 208) combining Portland line Trains 20, 19 and 17 with Ogden line pool Trains 14 and 21, effective September 29, operating as follows:

Steward arriving Oakland Pier from Carlin, Train 21, at 9:00 P. M., second day, as shown above in operation of Trains 14 and 21, was required to report 3:00 P. M. third day (regular layover day Oakland Pier-Carlin Trains 14 and 21), stock car and depart Oakland Pier 8:30 P. M., Train 20, deadhead, arriving Portland 8:15 P. M. fourth day, at which point steward was held thirty-four hours and fifteen minutes, going on duty Train 19 at 6:30 A. M. of the sixth day, arriving Dunsmuir at 9:30 P. M., at which point steward was again held 12 hours, going on duty at that point 9:30 A. M. of the seventh day, arriving Oakland Pier 7:15 P. M. Eighth day layover at Oakland Pier, ninth day on duty Oakland Pier, 6:30 A. M., Train 14, and repeat.

Under date of September 26, 1940, our committee protested the action of the carrier, as follows:

"There has been appealed to this office protest of Northern District stewards against the proposed pooling of Portland Line trains 20-19-17 with assignments between Oakland Pier and Carlin now in effect on trains 14 and 21, the change to be made September 29th, next.

managerial right to create new assignments or positions. Of course this right may be restricted by agreement. However, the current agreement between the petitioner and the carrier is free of any such restriction. The mere fact that the current agreement requires the carrier to bulletin new positions and vacancies and to award such positions on a seniority basis (see Rule 7, quoted supra), does not in any way deprive the carrier of its fundamental right to create or establish new positions or assignments.

Stewards Andrews and Blair occupied certain assignments (see paragraph 4, carrier's statement of facts). These assignments were cancelled or abolished and new assignments or positions were created (see paragraph 3, carrier's statement of facts). The new assignments or positions were bulletined for seniority choice and awarded to the successful applicants in accordance with the current agreement (see paragraph 3, carrier's statement of facts). Andrews and Blair were two of the successful applicants and were awarded two of the said assignments or positions. Andrews and Blair worked the said new assignment while they remained in existence and were compensated therefor in accordance with Rule 2 of the current agreement (quoted supra). This factual situation produces the inescapable conclusion that the carrier's action was proper and strictly in accordance with the current agreement.

The carrier submits that the action it took in the instant case was in accordance with its managerial prerogative and the said action in no way violated any of the provisions of the current agreement.

CONCLUSION

Having conclusively established that the alleged claim in the instant case is entirely without merit, the carrier respectfully submits that it should be denied.

OPINION OF BOARD: Prior to September 29, 1940, the Carrier had four stewards assigned on its trains Nos. 14 and 21 between Oakland and Carlin. Under Bulletin No. 214, dated October 18, 1940, the Carrier created a pool of five stewards, continuing the runs on trains Nos. 14 and 21, but adding a run on train No. 20 (deadhead) Oakland to Gerber, and return from Gerber to Oakland on train No. 17. This bulletin did not abolish the previous assignment, nor was the previous assignment abolished unless it was inferentially done by Bulletin No. 214. The original assignment was 228½ working hours a month, while under the new assignment the working hours were 240 hours a month.

On behalf of the Carrier, it is contended that in the absence of a rule to the contrary, a position can be abolished without notice and a new one created by proper bulletin under Rule No. 7.

Similar contentions were made by the Carrier in Awards Nos. 621 and 327. In both these awards, the Carrier's contentions were overruled by this Board.

Rule No. 7 deals with bulletins. Before this rule is applicable, there must be a new position or a vacancy. The original assignment on trains Nos. 14 and 21 continued, under the Bulletin No. 214, but under that bulletin, the trip from Oakland to Gerber and return was added.

The Board thinks, under the circumstances, the agreement was violated. The Board's position in this claim is strengthened by the statement (not denied or explained by the Carrier) of the employee's representative that at no time previous to this occasion had the Carrier changed an assignment under the conditions as was done in this case.

Rule No. 2 provides that "(a) Two hundred and forty (240) hours or less will constitute a month's work for regular assigned stewards * * *." This means that a regular assigned steward may have an assignment that will require 240 hours to perform before he will be entitled to extra compensation, but it is not necessary for him to have an assignment of 240 hours before he is entitled to his regular monthly pay. A regular assigned steward is entitled to his regular monthly pay when he performs his regular monthly assignment. When the claimants performed 228½ hours service, they were entitled to a month's pay under the original assignment, and should be paid the difference between 240 hours assignment, under Bulletin 214, and the original assignment of 228½ hours a month, a straight-time rate during the time the assignment under Bulletin No. 214 was in effect. The Board finds nothing in Awards Nos. 549 and 550 inconsistent with this view.

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 Carrier violated the current agreement.

AWARD

Claim sustained in conformity with opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1942.