

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

FRED HARVEY SERVICE, INC.

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local No. 351, Hotel and Restaurant Employees International Alliance, for and in behalf of the regularly assigned Dining Car Crews on trains No. 1 and No. 2—between Oakland, Calif. and Barstow, Calif., during the period from July 1st, 1941 to September, 1941, for additional compensation for one thousand, eight hundred and eleven miles (1811) at the rate set forth in Article 2—Section 5 of the current agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement dated July 1, 1937, amended and revised effective July 1, 1940, Rates of Pay effective Dec. 1, 1941. Article 2—Sections 3, 4 and 5 of the aforementioned agreement provide:

"Section 3. Basic Monthly Mileages. On the runs listed below the miles shown opposite each run shall constitute a calendar month's work for which the monthly rates apply; it being understood that should the scheduled running time or mileage of any train listed be changed that the basic mileages for that train will be revised to a mileage to be agreed upon by the Company and the Employees' Committee. It is further understood that transcontinental trains operating between Chicago and Los Angeles on a scheduled running time of less than 110 hours for a round trip will come within a classification of 15,000 miles or over, and transcontinental trains on a scheduled running time of 110 hours or more for a round trip will come within a classification of less than 15,000 miles:

RUNS	MILES		
	28-Day Month	30-Day Month	31-Day Month
Chief	13,863	14,853	15,348
Super Chief	13,368	14,642	15,279
El Capitan	13,368	14,642	15,279
California Limited	12,639	13,542	13,993
Scout	12,650	13,446	13,894
Grand Canyon Limited	12,538	13,434	13,882
Wellington-Belen	13,130	13,130	13,787
Chicagoan-Kansas Cityan	13,600	13,600	13,600
Ranger	11,816	12,660	13,082
Golden Gate	10,048	10,048	10,048
Valley Flyer	10,048	10,048	10,048
Kansas City-Shopton	9,959	9,959	10,392
Ash Fork-Phoenix	8,901	9,675	10,062
LaJunta-Denver	8,052	8,418	8,784

No protest or claim has been filed by the employes for the period December 18, 1941, to the present date, September 14, 1942. In line with the intent of the provisions of Section 3 of Article II, the Employes' Committee has agreed with the above described change in basic mileages for this run.

POSITION OF CARRIER: It is the position of the Carrier that its handling and the payment thereunder are strictly in accord with the provisions of the Agreement between the parties.

The claim of the employes is that they have a veto power over the action of the Carrier, and they belatedly attempt to exercise it. No proof has been nor can be produced in support of such a theory. The Carrier submits that the actions of the parties disclose the intent of the Agreement with respect to changes in basic mileages of any run listed under Section 3 of Article II, and that this intent was recognized by the employes. The claim is an attempt to abort the Agreement so as to establish such power of veto, thereby freezing the mileages to those in the printed Agreement, and, in addition, to hold the running time of trains to what it was as of the effective date of the Agreement, the latter a matter not within the jurisdiction of the Carrier.

The claim is without basis in the Agreement between the parties and is otherwise devoid of support or consideration.

In any event, if the claim had support in the Agreement, which the Carrier does not concede it has, its consideration is voided by the provisions of Section 10 of Article VI of the Agreement as quoted in the Carrier's Statement of Facts. That rule admits of no alternative and contains no provisions for the payment of a claim running after 30 days from originating date that is not presented within that period. No change in the wording of the rule may be made without negotiation between and agreement of the parties, except as provided in Article X of the Agreement.

As further proof of the invalidity of the employes' claim as described in the foregoing "Statement of Claim," no protest or claim has been made by the employes regarding the basic monthly mileages which have been in effect during the period from December 18, 1941 to the present date, September 14, 1942. Such basic mileages are identical with the basic mileages in effect during the periods referred to in the "Statement of Claim." The Employes' Committee agreed with the change in basic mileages in line with the intent of the provisions of Section 3 of Article II of the Agreement.

OPINION OF BOARD: The agreement between the carrier and the employes, effective July 1, 1940, fixed the basic monthly mileage for employes on various trains and provided for extra pay for mileage accumulated in a calendar month by regularly assigned employes on such trains in excess of the monthly mileage fixed. The agreement also provided that in the event of a change in the scheduled running time or mileage of any such train the basic monthly mileages for such train would be revised to a basic mileage to be agreed upon by the carrier and the employes.

The carrier thereafter increased the mileage of a train so listed without an agreement for a revised basic mileage, and insists that since the same change had been made on this train for a period prior to this agreement and the basic mileage had then been agreed to by the parties the basic mileage for such a change was established and no further agreement was necessary for the same change made subsequent to the agreement.

We cannot agree with this contention. The wording of the agreement is plain and unambiguous and therefore not subject to construction.

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 mileage was added to the train without a change in the basic mileage being agreed to, in violation of Section 3, Article II of the agreement; and that such additional mileage must be paid for pursuant to the provisions of Article II, Section 5.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1943.