

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**H. Nathan Swaim, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**THE TEXAS AND PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** A. Claim of Dining Car Stewards J. E. Johnson, J. C. Clark, and T. R. Crow for a minimum of eight hours in lieu of time allowed September 20, 22, and 22, 1937, respectively, carrier's file T-14195.

B. Claim of Dining Car Steward T. J. Rauber for a minimum of eight hours June 12 and 13, 1938 for extra service performed on dates named, carrier's file T-14683.

C. Claim of Dining Car Steward J. E. Johnson for eight hours in lieu of time allowed for service performed Train No. 6, November 19, 1937, carrier's file T-14270.

D. Claim of Dining Car Steward J. C. Clark for eight hours straight time and fifty minutes deadhead time, October 19, 1937, carrier's file T-14256.

**EMPLOYES' STATEMENT OF FACTS:** A. Claimants regularly assigned on dates in question were each used in extra service or in service not covered by their regular assignment. In each instance claimants were either held off of their regular assignment on special trains thereby being inducted in extra service.

B. Claimant arrived Fort Worth on his regular assignment run No. 1 on June 12, and was not due out until the following day June 13th, on Train No. 16, but was doubled out of his terminal, Train No. 2, June 12th and while on the line of road was advised he would be doubled out of his home terminal, Fort Worth, on his regular assignment, due out Train No. 16, June 13th; however, upon arrival Fort Worth he was further instructed to close out his report and that he would go off duty this point. Claim was presented for a minimum day covering each date claimant was used in extra service, namely, June 12 and 13, and denied.

C. Under schedule of assignments for dining car stewards claimant due in Fort Worth, his home terminal, Train No. 6 on date in question. Train No. 6 being late, and upon arrival at Fort Worth was required to go through his terminal, Fort Worth, to Dallas for the purpose of serving breakfast.

D. Claimant regularly assigned as dining car steward on date in question was used in extra service on Train No. 1, working from 6:00 A.M. until 12:35 P.M. for which he claimed eight hours for service performed and fifty minutes deadhead time which was denied.

Claims were filed in each instance as enumerated above by the claimants in accordance with schedule rules hereinafter quoted and was declined.

Claim of Dining Car Steward J. C. Clark for 8 hours straight time and 50 minutes deadhead time November 22, 1937, file T-14256.

Claim of Dining Car Steward J. E. Johnson for 8 hours in lieu of 4 hours 40 minutes as allowed for service performed on Train 6, November 19, 1937, file T-14270.

Claim of Dining Car Steward T. J. Rauber for a minimum of 8 hours on June 12 and 13, 1938, file T-14683.

You base the claims above listed for a minimum of 8 hours under Rule 4.

These were all regularly assigned dining car stewards and Rule 4 would in no manner be applicable to them; instead, they were properly compensated for service rendered in line with Rule 2.

The principle involved in these cases was, in fact, settled by Award 703. By referring to the Carrier's statement to the Board of March 15th, it will be found that the practice both prior and subsequent to the Agreement, was to use regular stewards, as was done in these cases.

In negotiating the Agreement, at conference May 6, 1936, Vice President Smith of the Organization endeavored to get a rule, his proposed Article 1 (d), in effect that regular employees performing service as in these cases would be paid for as part of their regular assignment, provided this service did not represent service plus their regular assignment, to which we would not agree.

Instead, as we stated to the Board:

'We have no rule in the agreement that extra service will be protected by extra men or that regular stewards will not be required to perform extra or special service; to the contrary, the regular crews do now, as they have always done, protect the extra or special service on this railway.

'We do not now have, and have never had, an extra board from which to call men to protect a diner when necessary to furnish additional service to that over and above the regular service.'

By referring to the opinion of the Board in case covered by Award 703 it will be found the Board states that the Carrier's position in this respect and as outlined in the Opinion of the Board is supported by the Agreement and the evidence of record.

Claim declined.

Yours truly,

/s/ W. H. Tobin  
Asst. General Manager."

and it will be noted in the eighth paragraph attention was called to Award 703 and would call particular attention to the ninth and subsequent paragraphs of this letter pointing out the fact that in making the Agreement the Organization endeavored to get a rule that would allow time as claimed in this case, which was declined by the Carrier and the Agreement was concluded and signed without any such rule.

**OPINION OF BOARD:** This docket presents several claims of Dining Car Stewards for a minimum of eight hours for extra service in lieu of the actual time worked and allowed.

These claims are all based on the second sentence of Rule 4 of the Agreement, which is entitled "Extra Employees" and reads as follows:

"Extra employees performing road service in place of regular assigned employees, or on an extra assignment, will be paid in accordance with their years of service and classification. When used for extra road service, employees will be paid for actual time worked, with a minimum of eight (8) hours for each day so used."

The Carrier contends that all of this Rule 4 applies only to "extra" employees, and that the employees here in question were "regular" employees and were correctly paid under the provisions of Rule 2 (b), which provides that, "Employees will be paid overtime on actual minute basis for all time on duty in regular assignment in excess of 240 hours at pro-rata rate \* \* \*." (Our emphasis)

As we understand the record, the extra service here involved was not "on duty in regular assignment," even though the stewards were "regular" stewards using "regular" dining cars on regular trains. These stewards and cars would, of course, be regular, but when used as an extra dining car on a regular train, we do not see how it would differ from being on an extra train.

While Rule 4 is entitled "Extra Employees," we do not believe the entire rule was devoted to the subject of extra employees. The first sentence of the rule seems to fully cover the work of extra employees; first, when taking the place of regular employees, and second, when on "extra assignment" service outside of the regular assignment of regular employees or "extra road service."

We do not believe the second sentence of said rule also covers extra road service only of extra employees. It seems to be conceded that this particular Carrier did not maintain an extra board of stewards, but instead used six stewards regularly on five runs. In the absence of any extra employees, the entire rule is surplusage if it all applies only to extra employees. It should not be so construed unless such construction is necessary.

The first sentence of Rule 4 expressly refers to "extra" employees, thus limiting the word "employees" to "extras." This limitation was apparently felt to be necessary even though the rule was entitled "Extra Employees."

The second sentence refers to "employees" without any modifying words of limitation. Without any such limitation we construe the word as referring to all employees.

**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 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 agreement as contended.

#### AWARD

The Claim, A, B, C and D, is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.