

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 Samuel Adelson, for additional compensation months of October, November and December, 1940; January, February, March, April and May, 1941.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 17, 1942, the National Railroad Adjustment Board, Third Division, rendered Award 2060, Docket DC-2144 sustaining 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.

During this period claimant operated on Trains 14 and 21 (Oakland-Carlin) and 20 and 17 (Oakland-Gerber).

Order accompanying Award 2060, Docket DC-2144 directed the Carrier to pay employees involved on or before February 16, 1943. Claimant was not compensated and under date of February 21, 1944, General Chairman R. J. Brooks submitted request for payment in letter addressed to Mr. H. A. Butler, Manager of the Dining Car Department, and request was subsequently declined in Mr. Butler's letter to Mr. Brooks dated March 10, 1944. Copies of these communications are shown as Committee's Exhibit "A" and made a part of the record.

POSITION OF EMPLOYEES: The Committee's submission in Award 2060, Docket No. DC-2144 was in part as follows:

"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 20-17 (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." (Emphasis ours.)

Your attention is directed to that part of "Opinion of Board" (Award 2060), reading:

"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

The Division's attention is respectfully directed to letter from Mr. R. J. Brooks to Mr. H. A. Butler dated February 21, 1944 (see par. 10, Carrier's Statement of Facts), wherein claim is made in behalf Mr. Adelson for additional time allowances ranging from 9½ hours to 57 hours per month and aggregating 330½ hours, or an average of approximately 47 hours per month, for the period covered by the claim.

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: The record shows that this Board in Award 2060 sustained the claim of Dining Car Steward A. J. Andrews, et al., for earnings on Trains 20 and 17 in addition to the guarantee on Trains 14 and 21, from October 16, 1940 to May 11, 1941. These amounts were paid to Andrews and to one Blair who was shown to have been in the identical situation as Andrews with respect to his claim. Samuel Adelson, in whose behalf the present claim was brought, claims that he too occupies a similar position with respect to Andrews' claim and asks that he be paid for additional time in accordance with Award 2060.

Immediately prior to the time of the happening of the events that brought about the claim resulting in Award 2060, Andrews and Blair had a regular assignment on Trains Nos. 14 and 21 which required 228½ hours of actual service but for which they received the guarantee of 240 hours. By Bulletin No. 214, dated October 18, 1940, the Carrier created a pool of five stewards to make the runs on Trains Nos. 14 and 21, and adding thereto runs on Trains Nos. 20 and 17. The previous assignments on Trains Nos. 14 and 21, held by Andrews and Blair, were not abolished and Award 2060 so determines. It is then held in that award that Andrews et al. are entitled to continue to receive the guarantee of 240 hours for 228½ hours' work and be paid the difference between 240 hour assignment, under Bulletin 214 and the original assignment of 228½ hours. The Carrier paid Andrews and Blair in accordance with this award, each of them having been assigned to Trains Nos. 14 and 21 before Bulletin No. 214 was issued.

The record shows that Adelson prior to the issuance of Bulletin No. 214 was assigned to Trains Nos. 96 and 97 which required his working 270 hours per month for which he was paid. The rule guaranteeing 240 hours' work per month was in no way involved in his case. When the positions advertised in Bulletin No. 214 came to his attention, he bid in one of them, as did Andrews and Blair. But he was in no way affected by the failure of the Carrier to abolish the former assignments on Trains Nos. 14 and 21 as were Andrews and Blair. The result is that Adelson is not an employee similarly situated with Andrews and Blair and can obtain no benefit from Award 2060. The record shows that Adelson has been paid for all the time he has worked and has no time due him on any monthly guarantee as did Andrews and Blair by virtue of the failure of the Carrier to abolish their old assignments which were included in the new ones. No basis for an affirmative award exists.

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 did not violate the current agreement as to Claimant Adelson.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1944.