

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD TRAINMEN
NORTHERN PACIFIC RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of Steward Myron M. McLean for allowance of four hours September 28, October 7, November 11, 20, 30, December 9 and 29, 1943, as well as like adjustment for other dining car stewards on subsequent dates, based on Rule 5 (e) of the Dining Car Stewards' Agreement, effective August 1, 1936."

JOINT STATEMENT OF FACTS: Dining Car Department crews are assigned to perform service on the North Coast Limited operated as Train No. 50 leaving St. Paul at 11:00 P. M. running to Chicago; Train No. 51 leaving Chicago 11:00 P. M. running to St. Paul; Train No. 1 leaving St. Paul 8:35 A. M. running through to Seattle; and as Train No. 2 Seattle to St. Paul. The trip assignment is St. Paul to Chicago on Train No. 50; Chicago to Seattle on Trains Nos. 51 and 1; Seattle to St. Paul on Train No. 2.

Mr. McLean was assigned as dining car steward on Trains 50-51-1-2.

On April 29, 1939 the following bulletin was issued to Dining Car employees assigned to the North Coast Limited:

"BULLETIN

St. Paul, Minn.,
April 29, 1939.

Dining Car Stewards,
Trains 1 and 2.

Effective May 15th and thereafter, until otherwise notified, stocking time for Train No. 50, at St. Paul, will be 7:00 A. M.

Crews should report prepared and ready to go out, if necessary.

/s/ A. W. Thomson
Superintendent,
Dining Car Department."

On September 16, 1943 the above bulletin was re-issued to read:

"BULLETIN

St. Paul, Minn.,
September 16, 1943.

DINING CAR STEWARDS:
Trains 1 and 2.

No. 50's Diner, 1697, was added to Train No. 7 from St. Paul, today, deadhead to Fargo for service on first section Train No. 2, leaving Fargo, today, thence to St. Paul on No. 50 through to Chicago.

The current Dining Car Stewards' Agreement became effective August 1, 1936. For a period of more than four years, from April 29, 1939 to September 16, 1943, Mr. McLean and other stewards reported at the Commissary precisely as Mr. McLean did on September 28, 1943 and no claim was made that they should be paid four hours additional compensation. The Employees' acquiescence in the application of the agreement for a period of more than four years is sufficient evidence to show that what they are now seeking is to place a new construction on the application of the rules. The construction now contended for by the Employees is not in accordance with their submission which resulted in the negotiation of Rule 5 (b) and (e), and neither is it in accordance with the provisions of Rule 5 (b) and (e) and the application of this Rule.

There are ten stewards assigned to the dining cars operating on the North Coast Limited, including Mr. McLean. The only claims that have been submitted by dining car stewards for payment of the additional four-hour allowance are those submitted by Mr. McLean covering September 28, October 7, November 11, February 11 and the claim from Conductor Kirby covering February 20. All of the dining car stewards on the North Coast Limited are governed by the provisions of the bulletin of September 16, 1943. The fact that claims have been submitted by only two stewards, shows that the majority of the stewards do not consider that they are entitled to additional compensation under the rules involved and therefore have not made claim for such additional compensation.

This Division has recognized the principle that the acts of the parties to an agreement over a period of time signifies the intentions of the parties and will be adhered to by the Board in deciding disputes. Awards Nos. 1289, 1606, 1645, 1806, 1811, 2137, 2146, 2281 and 2576 sustain this proposition.

The rule requested by the Employees covering reporting, stocking or conditioning, prior to the negotiation of the current agreement; the rule finally negotiated as the result of this request; and the application of this rule for more than four years shows the intent of the parties as to the application of the rules involved. The actions of the parties to the agreement for more than four years shows the correct application of the rule and this application should not be altered by this Division.

OPINION OF BOARD: This is a claim of steward M. M. McLean and other dining car stewards that they are entitled, by provisions of Rule 5 (e) of the Agreement effective August 1, 1936, to four hours September 28, 1943, and subsequent dates, on account of reporting and not being used in road service, in addition to the allowance of three hours under Rule 5 (b) for stocking cars at St. Paul.

The record shows stewards were properly compensated under Rule 5 (b) for stocking cars and that the claim for four additional hours under Rule 5 (e) is limited to the period between September 28, 1943, and May 31, 1944, for the reason the Bulletin of September 16, 1943, was cancelled on the latter date, thus ending the period involved in this claim.

For the reasons stated in Award 2707, this claim shall be disposed of on the basis of Award 2707, Docket DC-2815.

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 claim will be disposed of in accordance with the Opinion.

AWARD

Claim to be disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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