Award No. 3939

Docket No. DC-4170

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Steward H. S. Deckard, Car 1038, Group No. 9, Working Schedule No. 75 for (2) two hours, (40) forty minutes for loss of time account of being taken off his assignment and used on a Special, January 2, 1944.

EMPLOYES' STATEMENT OF FACTS: Steward H. S. Deckard, regular assigned steward in Group No. 9, schedule No. 75, was removed from his assignment on January 2, 1944, to work a Special, Washington to Philadelphia, instead of his regular assignment, which his schedule allows (12) **twelve hours, and (50) fifty** minutes, whereas Steward Deckard was allowed (10) ten hours (10) ten minutes.

CARRIER'S STATEMENT OF FACTS: Steward H. S. Deckard was regularly assigned to Dining Car No. 1028 in Group No. 9 found in Working Schedule No. 75, dated December 6, 1942, with home terminal at Washington, D. C. On January 2, 1944 Steward Deckard and his car were used on Special operated from Washington to Philadelphia, Pa.

POSITION OF EMPLOYES: Steward H. S. Deckard was removed from his regular assignment for the convenience of the Management on January 2, 1944. His regular assignment as per schedule No. 75 would have allowed Deckard to make twelve (12) hours, fifty (50) minutes, whereas he was allowed ten (10) hours, ten (10) minutes.

For the information of the Board we are quoting Rule 12 of the Dining Car Stewards Agreement in effect on the Baltimore and Ohio Railroad:

RULE 12

Special Service

> "When regularly assigned stewards are taken off their assignments and used in other service, they will receive for such service not less than the earnings of their assignments. Effort will be made to return them to their regular assignments as promptly as possible consistent with the requirements of the service."

This case was handled up to and including Manager of Labor Relations W. G. Carl, who under date of August 10, 1945, rendered the following decision:

it is admitted H. S. Deckard was removed from his regular assignment to work another assignment and the Committee desires to demonstrate to the Board that the working schedule as submitted by the Carrier supports the contention of the Trainmen's Committee that Rule No. 12 of the Dining Car Stewards' agreement is properly interpreted in our contention and supports the claim as presented.

The Carrier contends in their analysis of the rule that a dining car steward is assigned to the dining car itself and such constitutes his regular assignment. It can readily be seen by the Board from the reading and information contained in the working schedule issued by the Carrier that such interpretation was never previously contemplated, for the simple reason the working schedule specifically refers to the date a dining car will leave a given point and arrive at other points and sets up and refers to the specific territory to be covered by a certain train running on schedule. The Committee contends, as the Board can readily see, that the last part of the rule reading, "effort will be made to return them to their regular assignments as promptly as possible consistent with the requirements of the service", refers to the assignment of work or the operation of a dining car over certain territory under specific time schedules. In other words, the normal operation of specific trains constitutes the assignment of the dining car steward over a given territory as outlined in the working schedule. The rule cannot consistently be interpreted otherwise, as the Board can readily see the rule in dispute would serve no useful purpose and that the contention of the Carrier has been assumed in order to escape the provisions of the rule for the purpose of eliminating the payment of a dining car steward the earnings of his regular assignment, to which he is properly entitled on basis of the rule and in accordance with his seniority standing in the service.

The Committee therefore respectfully requests that conclusion be drawn by your honorable Board whereby the claimant's earning power on his assignment will not be reduced arbitrarily by the Carrier in accordance with the protection he enjoys relative to his seniority standing, and in consistency with the purpose of the working schedule.

It is further noted that reference is made by the Carrier to Awards 3388 and 3395, and upon the examining of the awards it is contended that the subject in dispute and surrounding circumstances is entirely foreign to the question contained herein.

The Committee requests that an affirmative award be rendered in order to compensate the claimant for services which he chose to perform, but which was arbitrarily denied by the Carrier for the purpose of their own operating conveniences on January 2, 1944. It can be affirmatively stated that the claim is just and proper and in keeping with the intent and purpose of the schedule rules in effect governing the employment of dining car stewards.

OPINION OF BOARD: Steward H. S. Deckard was regularly assigned as one of three stewards in Group No. 9, Working Schedule No. 75 effective December 6, 1942, including Supplements effective to the date, January 2, 1944, of the trip involved by this claim. On January 2, 1944, he was taken off the run shown for the first day of that schedule, which provided for that first day, a run, Washington, D. C., to Jersey City, N. J., and return, with an allowance of 12 hours 50 minutes; instead he was used on a special run Washington, D. C., to Philadelphia and return for which he was allowed 10 hours, 10 minutes.

The contention of the petitioners is that Rule 12 is applicable to this situation and with this the Board agrees. The Agreement (Rule 10) provides for schedules of dining car runs and assignments; Working Schedule No. 75, Group No. 9 complied therewith. When Steward Deckard was taken off the run established for the first day of that Schedule and used on the special run, Washington, D. C., to Philadelphia, Pa., and return, Rule 12 became applicable.

The claim should be sustained for additional time allowance of 2 hours 40 minutes with compensation for all or any portion of such additional allowance which causes the total of hours worked by Steward Deckard during the involved month to exceed the basic month's work of 240 hours upon which his pay is based.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Claim will be sustained in accord with the Opinion.

AWARD

Claim sustained in accord with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1948.