

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim for Dining Car Steward A. L. Felmar, for loss of earnings account of being used on a section of Nos. 5 and 6, instead of his regular assignment, on November 5th to November 11th, 1944, these dates being inclusive; and for all other Stewards on subsequent dates.

EMPLOYEES' STATEMENT OF FACTS: Dining Car Steward A. L. Felmar, on Dining Car 1070 as 1034, regular assigned steward in Group No. 8, Working Schedule No. 75, reissued including supplements Nos. 1 to 47, inclusive as of Feb. 25th, 1944. Was used on a section of No. 5 from Washington, D. C., to Chicago, Ill., held there for return of a section of No. 6, Chicago to Washington, D. C. Date that Steward Felmar was held out of regular assignment was November 5th to Nov. 11th, inclusive, whereas if he had operated on his regular assignment he would have made 21 hours, 5 minutes more than he made on section of Nos. 5 and 6. Home terminal of this Group is Washington, D. C.

CARRIER'S STATEMENT OF FACTS: Steward A. L. Felmar was regularly assigned to Dining Car No. 1070 in Group No. 8 found in Working Schedule No. 75, dated December 6, 1942, with home terminal at Washington, D. C. On November 5, 1944, Steward Felmar and his car were used on Section of Train No. 5 (Capitol Limited) operating daily between Washington and Chicago, Illinois, and were then used on return trip of Train No. 6 (Capitol Limited) operating daily between Chicago and Washington.

POSITION OF EMPLOYEES: Steward Felmar should be paid not less than the earnings of his regular assignment totaling 77 hours and 50 minutes. He was allowed time as follows:

Date	Trains	Hours Made	Trains Due	Hours Due
Nov. 5	Transfer & protect	8.30	504	6.05
6	Protect	6.30	9	14.50
7	Special	9.00	15	10.45
8	Special	6.45	10	13.35
9	Layover	8.00	7	11.25
10	Special	10.00	2nd 6	9.20
11	Special	8.00	8	11.50
		TOTAL 56.45		77.50
 Hours due 77.50				
Hours made 56.45				
Short 21.05				

Day	Trn.	Lvng. Time	Arrvg. Time	Points	Time Ready	Time Relsd.	Daily Hours	Class No. 2	Car No.
5	8	11:15p		Protect & Ice Chicago— Enroute Sleep in Dorm. Car.	1:00p	5:00p	4:00		
								4:00	1048
6	8		4:38p	Enroute— Washington	5:00a	4:50p	11:50	11:50	1049
7	8	5:00p	9:54p	Washington— Jersey City	10:00a	9:55p	11:55	11:55	1052
8	5	12:22p	5:10p	Jersey City— Washington	10:20a	5:25p	7:05	7:05	1055
9	504	1:30p	6:01p	Washington— Jersey City	12:00n	6:05p	6:05	6:05	1070"

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 were arbitrarily denied by the Carrier for the purpose of their own operating conveniences between November 5th and November 11th, of 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 A. L. Felmar was regularly assigned as one of nine stewards in Group No. 8, Working Schedule No. 75 effective December 6, 1942, including Supplements Nos. 1 to 47, inclusive, as of Feb-

ruary 25, 1944. On November 5, 1944 he was taken off the runs shown by that schedule consecutively for the 9th, 1st, 2nd, 3rd, 4th, 5th and 6th days, inclusive, for which there was a total allowance of 77 hours, 50 minutes; instead he was used on runs during that 7-day period other than that schedule for which service on these other runs he was allowed a total of 56 hours, 45 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. 8 complied therewith. When Steward Felmar was taken off the runs established for the 7 involved days of that schedule and used on other runs, Rule 12 became applicable.

The claim should be sustained for additional time allowance of 21 hours, 5 minutes with compensation for all or any portion of such additional allowance which causes the total of hours of work by Steward Felmar 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 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 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.