Award No. 5852
Docket No. DC-5792

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Dining Car Steward E. S. Burlingame for $44.84, the difference between his monthly guarantee and the actual amount he was paid before deductions for the month of May, 1950.

JOINT STATEMENT OF FACTS: The Dining Car Stewards on the Seaboard Air Line Railroad are represented by the Brotherhood of Railroad Trainmen. An agreement between these two parties effective as to rules March 20, 1948 is controlling. Quoted here are the rules of that agreement that are involved in this controversy:

"Article 1, Section 2, reads as follows:

Basic Month—Two hundred and twenty-five (225) hours credited as hereinafter provided shall constitute a basic month's work for assigned stewards who are ready for service the entire month and who lose no time on their own account. All time paid for shall be credited against the basic month.
Under Article 1 are found the following interpretations—in part—

(a) **Question:** What compensation will a steward receive who, for example, is assigned and actually works only 218 hours' service in a calendar month?

Answer: If regularly assigned and ready for service entire month and lose no time on their own account, steward will be paid a basic month of 225 hours.

(b) **Question:** What compensation will a steward receive who is in regular assigned service the entire calendar month?

Answer: If in regular assigned service the entire month and lose no time on their own account, steward will be paid a basic month of 225 hours plus any constructive time and overtime earned in accordance with Article 1, Sections 2, 3, 4, 5, and 6.
Article 5, Section 13, reads as follows:

Displacements: (a) Subject to Sections 7 and 8 of Article 5, a regular assigned employe whose position is abolished or who may lose his assignment through no fault of his own, may within **ten (10) days displace a junior regular** assigned employe. If on

number of hours, here 240 hours per month. Consequently, an employe who fills his assignment to the extent that the service permits will receive credit for a monthly minimum of 240 hours.

When, however, there is no work to be performed for a part of the month and the position is properly abolished, the 240 hours minimum must be treated as a basic guarantee for the monthly assignment. That the Carrier properly abolished the positions cannot be questioned. Floods preventing train operations eliminated the work of dining car employes without fault of the Carrier and subjected their assignments to cancellation. We hold that the claim of the employes for a 240 hour minimum month is not well taken under the circumstances shown. In the present case, the positions were not re-bulletined until July 9, 1947. The amounts paid claimants for the month of July, 1947, are far in excess of the basic application of the monthly guarantee of 240 hours. We need not concern ourselves, therefore, with calculating the basic amount of the guarantee for July, 1947, as it would apply to these claimants."

It is necessary to determine here whether under Article 1, Section 2 of the controlling agreement something is due the steward involved. The crucial word in the rule so far as the present case is concerned is the work "**assigned**". Unless the claimant steward was assigned when the long layover occurred, we do not see on what basis he can contend for the full 225-hour basic month, so the only question is—Was he assigned at the time of the long layover? We do not think he was. From May 7 to May 12th he was not an **assigned** steward, in that his assignment on Train 21-22 had been discontinued and in the interim until he took over the assignment on Train 57-58, he did not have the status of an **assigned** steward. Hence, he did not meet the primary condition of the rule necessary to incur the 225-hour basic month.

It is true that this man did not lose time of his own accord. The condition about not losing time is only one of three necessary conditions on which allowance of the 225-hour month is based and even though he claims he did not lose time of his own account during the month, unless he meets the other two conditions of the rule, the 225 basic hours are not operative. Having shown that he did not meet the condition as to assigned status, the 225-hour basic month is not operative even though he meets the other two conditions involved; therefore, the carrier respectfully requests that this claim be denied.

All information contained herein has been made known to the employes' committee during the handling of this claim on this property.

EMPLOYES' REBUTTAL TO THE CARRIER'S POSITION: In the third paragraph of the Carrier's Position an attempt is made to show that the Employes' Committee agreed with the Carrier's interpretation of Article 1, Section 2, but no correspondence or other handling with the Committee is cited in support of this effort. Instead the Carrier simply lists the names of five Stewards who failed to make proper claim when they were handled as was Steward Burlingame, then follows that list with a statement that this amounts to conclusive proof that the Employes' Committee agreed with the Carrier's interpretation of Article 1, Section 2 of the agreement. The Committee submits that the Carrier's argument on this point proves nothing, as the failure of individual members of the organization to file claims in accordance with the schedule agreement does not in any way change or nullify the provisions of the agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are clear from the record. Dining Car Steward E. S. Burlingame was regularly assigned to Trains 21-22 operating between New York and Florida. These trains are seasonal in their operation. They were discontinued in keeping with prac-

tice upon arrival in New York on May 7, 1950. In the meantime Claimant Burlingame had submitted a request to be allowed to displace a Steward on Trains 57-58, which were year round trains operated by the Carrier. He was informed by the Carrier that he would go on duty on Train 57 leaving New York on May 12, 1950. Thus, he lost time between May 7 and May 12, which prevented his making the 225 hours guaranteed for the month, subject to certain limitations provided in the rule. The claim herein considered is for $44.84, the difference between what Claimant was paid and the amount he contends he was entitled to under the 225 hours monthly guarantee.

The applicable rule requires that in order for the employe to have the benefit of the 225 hours guarantee, certain conditions must be met. First, he must be an assigned steward during the entire month. Second, he must be ready for service the entire month. Third, he must lose no time on his own account.

In the instant claim it is clear that the second and third conditions were met. The only real issue is with respect to the First. The Carrier contends that claimant was not assigned for the entire month of May—that he was in fact without an assignment between May 7 and May 12. The Petitioner contends that he was assigned for the entire month, and hence met fully the conditions of the rule, with the result that he was entitled to the benefit of the 225 hours guarantee.

The record would seem to answer this question clearly. It is in evidence that on April 30, Claimant requested that he be allowed to exercise seniority on Trains 57-58 when Trains 21-22 were discontinued. The record contains a letter dated May 1, 1950, written by the Carrier's representative, wherein it was stated that Claimant would displace one Bradshaw on Trains 57-58 leaving New York on May 12, 1950. Thus, it would appear that on May 1, 1950 the Carrier made a clear assignment of Claimant, which makes for the conclusion that Claimant was in assigned service for the entire month. This meets the first requirement of the rule that an employe be an "assigned steward" for the entire month.

In view of these facts, an affirmative Award is in order.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1952.