Award No. 13512
Docket No. DC-14848

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DMSION

(Supplemental)

Preston J. Moore. Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 849, on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Waiters Lindsey Moore and E. K. Jones that they be paid their portion of the monthly guarantee, for the months of February and March, 1964, received by regularly assigned employes on Trains 3 and 4, for trip commencing February 29, 1964, account of Carrier's failure to so compensate claimants in violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: Claimants, as extra employes, were assigned to Carrier's Train No. 3, on February 29, 1964. with a tour of duty from Chicago to Los Angeles and return. The positions to which Claimants were assigned were regular assignments, having been so designated pursuant to bulletin. The employes who had been awarded these bulletined positions had not, however, made a trip on the trains in question. Carrier compensated Claimants on the basis of the actual hours worked.

Under date of March 9, 1964, Employes filed time claim on behalf of Claimants, asking that they be granted their portion of the monthly guarantee that would have been paid a regular employe on the same assignment. (Employes' Exhibit A.) The claim at this point was based on Rule 4 of the Agreement which reads, insofar as herein applicable, as follows:

> "Extra employes performing road service in the place of a regularly assigned employe or on an extra assignment, shall be paid in accordance with their classification and shall receive the same number of hours as the regularly assigned employe would have received for the same service." (Emphasis ours.)

In letter dated March 13, 1964, Carrier denied the claim on the basis that Claimants were not replacing regularly assigned employes, as the employes who were assigned to the positions in question via bulletin, were not available to accept same. (Employes' Exhibit B.) On appeal to Carrier's Vice President-Personnel (Employes' Exhibit C), Employes stated that inas-

In the instant case, claimants were assigned from Carrier's extra board to Train No. 8, out of Chicago on February 29, 1964, to Los Angeles, California, and return. Claimants worked in place of two employer who were assigned to this run by bulletin on Feb. 24, 1964.

The successful bidders were not available to fill their new assignment on February 29, 1964, which was the first day of the regular assignment, because they were working on previously held assignments and the two extra hoard employes were used.

Since the regularly assigned employee were not available to report for their new assignment, they were not entitled or subject to their monthly guarantee for the days that they did not work the new assignment.

As shown in Carrier's Exhibit D, the claimants were paid in accordance with Rule 4 of their Agreement. They were paid "the same number of hours as the regularly assigned employe would have received for the same service." Claimants were also paid in accordance with the temporary understanding with the Employees; inasmuch as no guarantee was due the regular employes, no guarantee was paid the extra employes.

For the foregoing reasons, it is required that your Board deny this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants worked in place of two employes who were assigned to this run by bulletin on February 24, 1964. It certainly follows, therefore, that the Claimants were extra employes performing road service in the place of a regularly assigned employe as contemplated by Rule 4 of the agreement. The Carrier cannot insert the word "available" into Rule 4. The Claimants are entitled to the same pay for performing the road service as the regularly assigned employea would have received. There is no evidence in the record to determine what pay the regularly assigned employea would have received or what the Claimants were entitled to. For this reason we have no means of determining this issue of pay. We are left with no alternative except to dismiss the claim for lack of proof on the issue of pay.

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

That the parties waived oral hearing;

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 does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DMSION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.