

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Ex parte submission Brotherhood of Railroad Trainmen, Southern Pacific (Pacific Lines) in the claim of Steward A. J. Andrews that extra service performed during the month of August, 1936, be paid for and in addition to full monthly earnings made by his regular assignment."

EMPLOYEES' STATEMENT OF FACTS: "Steward A. J. Andrews was, for the full month of August, 1936, regularly assigned in the following manner:

TIME ALLOWANCE—DINING CAR CREWS EFFECTIVE JULY 1, 1936

| Days | Train | Station | Report | Leave | Station | Arrive | Released | Hours |
|--------|---|----------|--------------------------|--------|----------|--------|----------|-------|
| 1/2—1 | 8-20 | Oakland | 3:00p | 6:28p | Enroute | .... | 9:30p | 6:30 |
| 1—2 | 20 | Enroute | 5:30a | .... | Portland | 8:30p | 9:00p | 15:30 |
| 1—3 | 19 | Portland | 6:45a | 8:40a | Enroute | .... | 9:30p | 14:45 |
| 1—4 | 7 | Enroute | 5:30a | .... | Oakland | 9:20a | 9:45a | 4:15 |
| 1—5 | Layover | | | | | | Total | 41:00 |
| 1/2—6 | Layover | | | | | | | |
| 1/2—6 | 14 | Oakland | (Stock up 2:30 to 4:30p) | | | | | 2:00 |
| 1—7 | 14 | Oakland | 7:30a | 8:47a | Enroute | ..... | 9:30p | 14:00 |
| 1—8 | 14 | Enroute | 5:30a | .... | Ogden | 6:55a | .... | .... |
| —8 | 9 | Ogden | .... | 9:20a | Sparks | 9:30p | 9:30p | 16:00 |
| 1—9 | 30 | Sparks | 5:30a | 4:50a | Ogden | 6:05p | 6:45p | 13:15 |
| —9 | 21 | Ogden | 9:30p | 11:35p | Enroute | .... | 9:30p | .... |
| 1—10 | 21 | Enroute | 5:30p | .... | Oakland | 9:00p | 9:00p | 15:30 |
| 1—11 | Layover | | | | | | Total | 60:45 |
| 1—12 | Layover Extra crew makes 1 trip per month | | | | | | | |
| 1/2—13 | Layover and out on No. 8-20 | | | | | | | |

"During the month Steward Andrews was taken, at the instance of the Carrier, from his assignment and used in extra service. During August, 1936, Steward Andrews' regular assignment operated in the following manner:

| Date | Train and Route | | Hours | Extra Allowance |
|------|-----------------|-------------------|-----------------|-----------------|
| 1st | 8 | Oakland-Dunsmuir | 6 hrs. 30 min. | |
| 2nd | 20 | Dunsmuir-Portland | 15 hrs. 30 min. | |
| 3rd | 19 | Portland-Dunsmuir | 14 hrs. 45 min. | |
| 4th | 7 | Dunsmuir-Oakland | 4 hrs. 15 min. | |
| 5th | Layover | | | |
| 6th | Stock No. 14 | | 2 hrs. | |

ward insofar as his home terminal layover is concerned. All of the provisions of the agreement have been strictly adhered to by the Carrier and the Carrier submits that the rules of the agreement do not permit of an interpretation such as must be placed thereon by this Board, if the Petitioner's claim is sustained, and, furthermore, that it was not the intent of the makers of the agreement to extend to a regularly assigned steward pay for time worked in extra or special service in addition to earnings which would have accrued to him, if he had remained on his regular assignment. The only agreement requirement is as provided in Rule 2, Paragraphs (a), (b), (c), and (d), and Rule 5. The interpretation of the rules which the Petitioner requests this Board to place thereon would result in time allowance for service not actually performed. It would be inconsistent and inequitable.

The Carrier requests the Board to dismiss this dispute for lack of jurisdiction. If, however, the Board accepts jurisdiction, the Carrier then requests it to deny the claim of the Petitioner on the grounds that a change in rules of Dining Car Stewards' current agreement is being requested by the Petitioner and that an award in favor of the Petitioner would change the rules of said agreement, and, in particular, Rule 2, and that the claim as presented to this Board by the Petitioner has not heretofore been presented to the Carrier.

That the rules of the agreement involved do not support the claim which the Petitioner has submitted ex parte to this Board.

The Carrier requests the Board to deny the claim of the Petitioner on the grounds that said Petitioner has not presented this claim to the Carrier in accordance with the provisions of Section 2, Second and Sixth, of the Railway Labor Act.

OPINION OF BOARD: The evidence before the Board establishes that the claim submitted herein by the Petitioner is not the same claim submitted to the Carrier and discussed on the property. The claim submitted to and discussed with the Carrier was that a regularly assigned steward used in extra or special service during his usual layover period was entitled to receive pay for 16 hours for each such 24-hour period.

The claim in this docket is that a regularly assigned steward used in extra service shall be paid for extra service in addition to the full monthly earnings made on his regular assignment. In support of the claim submitted, Petitioner cites various rules of the agreement.

In the opinion of the Board, Rule 2 (b) is the rule applicable to situations of the kind here involved. This rule covers two distinct conditions:

1. A regularly assigned steward will not be required to perform extra or special service unless there is no extra qualified steward available.
2. A steward temporarily detached from his regular assignment at Company request shall not suffer wage loss.

The Carrier submits that in this case there were no extra qualified stewards available when regularly assigned Steward Andrews was used for the extra service. This statement is not challenged by the Petitioner, nor did the Petitioner deny or attempt to refute the statement of the Carrier that there were no extra qualified stewards available at the time that Steward Andrews was used in the extra service.

The statements of the parties are in conflict as to what constituted the regular assignment of Steward Andrews during the month of August, 1936. Their statements are also in conflict as to the earnings secured by Andrews in the regular assignment and the earnings which he has allowed for the extra or special service.

In view of the conflicting statements by the parties as to the regular assignment of Steward Andrews and as to his earnings in the regular assign-

ment and in the extra or special service during the month, and the fact that the claim submitted by the Petitioner is not the same claim handled on the property, the Board rules that the dispute should be remanded to the parties in order that they may determine what constituted the regular assignment of Steward Andrews, what earnings he secured in the regular assignment, and what earnings he secured in the extra or special service.

If his combined earnings for the entire service performed by him in August, 1936, were less than he would have earned had he remained on his regular assignment, he is entitled to the difference between what he actually earned and what he would have earned in his regular assignment. If his combined earnings for the month were equal to, or in excess of what his earnings would have been in the regular assignment, the Board rules he suffered no wage loss and has been properly compensated under Rule 2 (b).

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 the dispute should be remanded to the parties for conference and negotiations in line with the above opinion.

AWARD

Claim remanded in line with the above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of December, 1937.