

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN
REPRESENTING DINING CAR STEWARDS

TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim for time consumed by dining car stewards for completing necessary reports required by the Carrier after arrival at set out, turn-around and/or terminal points, as follows:

Dining Car Stewards:

T. J. Rauber	...	May 27, 1936	—30 minutes
L. E. Portman	..	May 27, 1936	—15 "
T. J. Rauber	...	May 31, 1936	—15 "
J. E. Johnson	..	May 31, 1936	—15 "
J. E. Johnson	...	June 3, 1936	—25 "
J. E. Johnson	...	June 7, 1936	—15 "
J. C. Clark	June 5, 1936	—10 "
J. C. Clark	June 8, 1936	—15 "
J. E. Johnson	...	June 12, 1936	—30 "
J. E. Johnson	...	June 9, 1936	—15 "
J. C. Clark	June 13, 1936	—15 "

and claims for these and other dining car stewards on all subsequent dates when similar service is required. Carrier's file T-13416."

EMPLOYEES' STATEMENT OF FACTS: "Under the provisions of Rule 2 (a) of the agreement in effect between the Brotherhood of Railroad Trainmen and the Texas and Pacific Railway, Dining Car Stewards are assigned under a schedule arrangement, as follows:

'SCHEDULE OF DINING CAR STEWARD ASSIGNMENTS
TEXAS AND PACIFIC RAILWAY

1st Day—On Duty, Fort Worth, Sunday	1:45 p.m.
Leave Fort Worth	3:05 p.m.
Arrive Texarkana (249 miles)	8:45 p.m.
Off Duty	8:45 p.m.
2nd Day—Leave Texarkana	6:45 a.m.
On Duty	6:00 a.m.
Off Duty	9:00 p.m.
Arrive Monahans (615 miles)	11:36 p.m.
3rd Day—Leave Monahans	4:40 a.m.
On Duty	6:00 a.m.
Arrive, Fort Worth (369 miles)	2:40 p.m.
Off Duty	2:40 p.m.
On duty, same date	4:00 p.m.

being allowed to employes involved to complete necessary clerical work in connection with their reports.'

"We were unable to reach agreement with General Chairman Russell and he called in a Grand Officer, Vice President Smith, to assist him, and we did reach accord with Mr. Smith on the agreement now in effect as of May 16, 1936, and no such article as the Committee's proposed 2-F appears in that agreement, it being made plain to them that we would not agree to any such rule. Instead, the stewards' time (the same as conductors, engineers, brakemen and firemen) would stop on arrival and release from duty and not continue until reports completed, etc.

"In conclusion, would again call attention to Western Board Decision 2203 and Southwestern Regional Train Service Board of Adjustment Decisions 42 and 423."

OPINION OF BOARD: This is a "claim for time consumed by dining car stewards for completing necessary reports required by the Carrier after arrival at set out, turn-around and/or terminal points,....." The petitioner then set forth the amount of time which each of several stewards consumed on different dates in the completion of necessary reports as alleged. It will be noted that the petitioner makes no request for the payment of time of stewards consumed in rendering reports and in accounting for receipts.

The petitioner contends that this requirement is a violation of Rule 2 (c) of the agreement which provides that "time will be counted as continuous on each trip from the time required to report for duty until released from duty, subject to exceptions mentioned in paragraph (b) of this rule."

The carrier did not deny that the claimants in this dispute may have spent the various periods of time in completing necessary reports as stated in the claim. It did deny, however, that under normal operations a steward is required to spend any such periods of time in the completion of reports incident to his tour of duty. The carrier urges, therefore, that Rule 2 (c), properly interpreted, does not require the payment of the claims herein presented.

The Division is of the opinion that a proper interpretation of Rule 2 (c) permits the carrier to require a steward to complete the reports incident to a run just completed. In support of the interpretation here adopted the carrier offered evidence showing that in the negotiations leading to the making of the present agreement, the petitioner asked for a rule comparable to the interpretation of Rule 2 (c) for which it is asking in this dispute. This is strong evidence that the carrier assumed that the interpretation now requested would not be permitted. The request for such a rule, while some evidence that the petitioner might have reconciled itself to the position of the carrier, is consistent with the hypothesis that the petitioner might have asked for the new rule as a matter of superabundant caution without relinquishing its conviction that Rule 2 (c) should receive the interpretation which it now asks for. While the Division should be cautious in giving probative value to proposals and counter-proposals that take place in the negotiations of an agreement, it is of the opinion that in a case comparable to this the fact that a specific rule is requested and declined has some value tending to prove that the rule adopted is not to be interpreted in the manner requested in the rule denied.

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 under the rules of the agreement and on the evidence of record, the petitioner does not establish a violation of Rule 2(c) as alleged.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1938.