

**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 of Dining Car Steward J. E. Johnson for 7 hours' pay, or the difference between 233 hours paid and the minimum of 240 hours for service performed in the month of April, 1937. Carrier's file T-13993."

**EMPLOYEES' STATEMENT OF FACTS:** "Dining Car Steward J. E. Johnson, one of the regularly assigned stewards, arrived in Fort Worth (home terminal) on Train No. 1 at 10:15 a. m. April 3, 1937, and under schedule assignment was not due out until the following day on Train No. 12, 1:45 p. m. April 4th; however, Steward Johnson was advised on arrival on April 3rd that the car to which he was regularly assigned was to be used in extra service on Train 26, due out at 4:00 p. m. April 3rd, making trip to Marshall and return on Train 15 to Fort Worth, due in at 7:55 a. m., April 4th. Steward Johnson did not make the extra trip out on Train 26 April 3rd and back on Train 15 April 4th, but did go out on his regular assignment on Train 12, 1:45 p. m. April 4th, and then continued to follow his assignment until it became time for his regular relief period, which is provided for under Rule 6 of the Agreement between the Carrier and the Brotherhood of Railroad Trainmen, which reads:

**'RELIEF PERIOD**

'Not less than ninety-six (96) hours off duty in twenty-four (24) consecutive hour periods or multiples thereof each calendar month will be allowed at designated home terminals for employees whose assignment and service do not permit of at least twelve (12) consecutive hours off duty period at their designated home terminals, each forty-eight (48) hours. The present practice of furnishing sleeping accommodations at away-from-home-terminal will be continued.'

"During the time that Steward Johnson was on his relief, his regular car was again used in extra service, making a trip to El Paso and return to Fort Worth, and by reason of the car making the extra trip and thereby throwing it out of line with the scheduled assignment, Steward Johnson was required to report and resume service approximately 20 hours ahead of the time that he ordinarily would have had to report had the car not made the extra trip.

"During the month, Dining Car Steward Johnson made all trips as called for on the scheduled assignment, but on account of the car having made the extra trips, Steward Johnson made 233 hours and claimed a minimum month of 240 hours, or an additional 7 hours to make up the minimum, which claim was declined."

crews will not be used in other service, nor does it in any manner deprive the Management of using them in order to obtain the 240 hours' service."

**OPINION OF BOARD:** In support of the present claim the petitioner contends that the service involved in this dispute, being extra service, should have been assigned to Steward Turner; and that the failure of the carrier to have assigned it to him would have been a violation of the agreement between the parties.

The carrier contends that in view of the limited amount of dining car service that it performs, it requires no extra board or extra list; that the rules of the agreement between the parties do not require it to maintain such a board or list, or to use extra men for extra service; that it employs six regular stewards to man five runs so that it can perform all of its dining car service without the use of extra men; and that, therefore, it was entitled to call Steward Johnson for the extra service involved in this dispute.

The Division is of the opinion that the carrier's position in this respect is supported by the agreement and the evidence of record. It follows that the carrier would not have violated any duty to Turner if it had failed to use him for the extra service in question. It also follows that the carrier was entitled to call the claimant for the required extra service. His failure to respond to the call justified the carrier in allocating the time of the run to make up the difference between the number of hours performed by Mr. Johnson under his regular assignment and 240 hours for which the carrier guarantees payment under Rule 2 (a) of the agreement between the parties.

The petitioner in support of its position relied primarily upon the statement in Rule 2 (b) of the agreement that "employees will be advised of their hours of service in regular assignments. . . . ." The carrier in this case did notify the employee involved of his hours of service "in regular assignment." The requirement in question does not, however, prohibit the carrier from calling a regular steward for extra service.

The petitioner raises some question about Rule 6 which states the hours or periods of relief to which a steward is entitled. It is not clear, however, whether it is making a claim based on an alleged violation of this rule. Certainly the record does not present sufficient evidence on which the Division can base an award.

**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 carrier properly paid the claimant in accordance with Rule 2 of the agreement between the parties.

#### AWARD

The claim is denied without prejudice to the right of the petitioner to present a claim based upon a possible violation of Rule 6.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

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