

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN
SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: "Claim of Steward A. J. Andrews, et al., for additional compensation for service rendered Ogden, Utah, to Green River, Wyoming, and return, May 28 and 29, 1937, and subsequent dates."

EMPLOYEES' STATEMENT OF FACTS: "Steward Andrews was regularly assigned to trains Nos. 248-30-9-287 between Oakland Pier, California and Ogden, Utah. On May 28, 1937, enroute to Ogden on train No. 30 he received message at Lakeside that Diner 10155, of which he was in charge, would be used as a helper diner on train No. 28, Ogden to Green River on the Union Pacific Railroad, returning next day via same line to Ogden for return to regular assignment."

"Claim was made for 8 hours, Ogden to Green River, May 28th and 8 hours Green River to Ogden, May 29th, which was declined by the Carrier. Therefore, the case comes before the National Railroad Adjustment Board, Division Three."

POSITION OF EMPLOYEES: "This claim and others subsequent to date here involved arises under Section (d), Rule 2, Stewards' Agreement, reading:

'For extra service, such as on helper diners in regular trains, diners in extra sections of trains, and diners in special trains, time shall be computed on same basis as for regularly assigned runs; but not less than eight (8) hours (including service hours) shall be allowed in any one day (hereby defined as period between 5:30 A. M. and 9:30 P. M.) in connection with a layover at layover terminal, set-out or turning point, except when such layover occurs on day of departure from or arrival at home terminal.'

"This the Carrier concedes (quoting from letter 11/9-37 Carrier to General Chairman):

'.....we concede, however, that the service referred to constitutes an extra trip within the meaning of Section (d) of Article 2.'

However, it does not agree to payment of the time as claimed. Steward Andrews rendered extra service on train No. 28 to Green River, returning therefrom on train No. 9 after substantial break having occurred in the service at that point; therefore, it is our Committee's contention that he should be compensated not less than eight (8) hours for service Ogden to Green River, and not less than eight (8) hours for service Green River to Ogden. This position is fully supported by the rule governing; therefore, the

Also Award No. 549, Docket No. DC-483 which contained a similar ruling.

"The Carrier requests the Board 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."

OPINION OF BOARD: In a letter of November 9, 1937 to General Chairman Brooks, Mr. Butler, representing the carrier, admitted that the service involved in this dispute "constitutes an extra trip within the meaning of section (d) of Rule 2." Since the facts of the controversy are not otherwise in dispute, the disposition of this claim, therefore, turns upon the proper interpretation of Rule 2 (d). This provides:

"For extra service, such as helper diners in regular trains, diners in extra sections of trains, time shall be computed on the same basis as for regularly assigned runs; but not less than eight (8) hours (including service hours) shall be allowed in any one day (hereby defined as period between 5:30 a. m. and 9:30 p. m.) in connection with a layover at layover terminal, set-out or turning point, except when such layover occurs on day of departure from or arrival at home terminal."

Rule 2 (c) provides:

"For regularly assigned runs time will be counted as continuous on each trip from time required to report for duty until released from duty at home or lay-over terminal, set-out or turning point, subject to deduction of eight (8) hours each night enroute, between 9:30 p. m. and 5:30 a. m., except that where Steward is required to remain on duty after 9:30 p. m., overtime will be allowed therefore on actual minute basis at pro rata rate."

The carrier computed the claimant's time continuously, with deductions permitted by Rule 2 (c), from the time he was required to report for duty at Oakland until he was released from duty on his return to Oakland. On this basis of computation, the claimant received a time allowance of four hours and fifteen minutes for the extra trip to Green River and return. After the petitioner had protested the carrier's method of computing the claimant's time allowance, the carrier, because of "the unusual circumstances involved in the instant case", made an allowance of eight hours for the extra trip.

The petitioner, in support of the claim, urges that under a proper interpretation of Rule 2 (d), the carrier should have allowed the claimant eight hours for the trip to Green River and an additional eight hours for the return trip to Ogden, although the actual time consumed in the whole trip was only a few minutes over twelve hours.

The rule relied upon by the petitioner clearly enough states that an employe required to perform extra service shall be allowed not less than eight hours in any one day. This rule, however, contains an important limitation. It states that the guarantee in question applies "in connection with a layover at layover terminal, set-out or turning point, except when such layover, set-out or turning point occurs on day of departure from or on arrival at home terminal".

The agreement contains no definition of the terms referred to in the preceding paragraph. The record throws little light on their meaning. In its submission the carrier makes this statement:

"Time for extra trips such as the one in question is computed on same basis for regularly assigned run and the guarantee provisions of minimum allowance of eight (8) hours is involved only in connection

with a layover at layover terminal, set-out or turning point. There was no layover at Green River insofar as this case is concerned."

This is merely a denial that the rule in question should apply to this dispute, but offers no explanation why it should not.

The record indicates that the car attended by the claimant was in extra service, that it arrived at Green River, its destination, at 11:40 p. m., that it was cut out of the train on which it arrived, that it was cut into another train, and that at 3:40 a. m., the following day, it began its return journey to Ogden. In these circumstances it is difficult to deny that Green River was either a layover terminal, or a set-out or turning point for the car and the steward which attended it. The Division accordingly finds that Green River was a layover terminal or a turning point within the meaning of Rule 2 (d).

Since the carrier has already given the claimant a time allowance of eight hours, it is understood that this award merely requires it to make an additional time allowance of eight hours.

FINDINGS: The Third Division of the Adjustment Board, after giving 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 employees involved in this dispute are respectively carrier and employees 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 misapplied Rule 2 (d) in the payment of Claimant Andrews for the extra service involved in this dispute.

AWARD

The claim of Steward Andrews is sustained in accordance with the findings in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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