

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

Wilson McCarthy and Henry Swan, Trustees

STATEMENT OF CLAIM: Claim of Dining Car Steward E. F. Thomas for one day's pay January 14 and 15, 1943, and Dining Car Steward P. J. Olson, February 3 and 4, 1943, in addition to time allowed, account required to perform the duties of Dining Car Steward on Dining Car Eagle Canon in addition to the Dining Car on which assigned. Rules 2 (e) and 4 Dining Car Stewards' Agreement.

EMPLOYEES' STATEMENT OF FACTS: Previous to the filing of the instant claim, the Carrier placed in service several cars which were previously used as observation cars, but have now been converted into dining cars for the purpose of feeding additional passengers for which accommodations are not available on the regular dining car. These cars are equipped with a counter and a place from which food is served, such food having previously been cooked in the regular dining car. These cars provide seating accommodations for approximately 36 or 40 patrons. When one of these cars are run in connection with a regular dining car two additional chefs and three or four waiters are assigned, for the purpose of handling and serving meals. The dining car steward on the regular dining car performs the duties of steward and is in charge of employes and is responsible for the additional car.

As result of the Carrier requiring Dining Car Steward E. F. Thomas on January 14, 15 and 16, 1943, and Dining Car Steward P. J. Olson on February 3, 4 and 5, 1943, to perform the duties and accept responsibility of dining car steward on the additional dining cars (referred to by the Carrier as trailer seating car), claim was made for a day's pay each date for such service in addition to pay for regular service performed on the dining car to which assigned. This claim is made under Articles 2 (e) and 4 of the Dining Car Stewards' Agreement, effective July 1, 1936, reading:

"2 (e) For extra service, such as on helper diners on regular trains, diners in extra sections of regular trains, and diners on special 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 between 5:30 A. M. and 9:30 A. M.) in connection with a lay over at lay over terminal, set-out or turning point, except when such lay over occurs on day of departure from or arrival at home terminal."

"4 Extra stewards performing road service in place of a regular assigned steward, or on an extra assignment, will be paid for actual time worked, or deadheading, the same as regular assigned stewards."

every check, instead of listing and accounting for only four meal checks. Furthermore, there is nothing in the current agreement with the Stewards, which would provide additional compensation for Messrs. Thomas and Olson, had they served the same number of meals in a diner on a regular passenger train as they did on the troop trains.

The Carrier denied the claim for the following reasons:

1. There is nothing in Rule 2 (e) which provides for an additional day's compensation for work performed. This rule provides for the manner of paying for extra service. Troop trains are considered extra service, and Messrs. Thomas and Olson were paid under the provisions of this rule. The rule provides that Stewards in extra service shall be allowed not less than eight hours in any one day 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. That Mr. Thomas was paid under this rule is evidenced by the fact that he claimed, and was paid, 2 hours 55 minutes layover time on January 15th, and 8 hours' layover time on January 16, 1943, at Salt Lake. Had Steward Olson not been paid a minimum of 8 hours each date, February 3rd, 4th, and 5th, he too would have claimed, and been compensated for, a minimum of 8 hours each day.
2. With respect to Rule 4, the Carrier asserts this rule, as it states, has application only to extra Stewards performing road service in place of a regular assigned Steward, or on an extra assignment. Both Mr. Thomas and Mr. Olson are regularly assigned Stewards.
3. There is no rule in the current Stewards' Agreement, or any other agreement to the Carrier's knowledge, that would give an employe two days' pay when no service is performed. Mr. Thomas was paid a day's pay for laying over at Salt Lake, January 16th, and Mr. Olson was paid a day's pay for deadheading Salt Lake to Denver on February 5th. In other words, both were paid a day's pay, but performed no service, yet they are claiming an additional day's pay.

The Carrier, as above stated, holds that neither the rules cited, nor any other rule in the schedule, supports the claim. The Carrier further holds, this claim is a request for a new rule covering additional compensation for a Steward when counter cars are used, and contends that it is not within the jurisdiction of your Honorable Board to make any new rule or establish a new rate of pay, and the claim should therefore be denied.

OPINION OF BOARD: The gist of these claims is for double compensation for one tour of duty. To allow them would in effect impose penalties on the carrier. Unless warranted by express provisions of the agreement, or by necessary implication from a breach of it, penalties should not be imposed.

To substantiate their claim the employes invoke Rule 2 (e) and Rule 4. The former provides:

"For extra service, such as on helper diners on regular trains, diners in extra sections of regular trains, and diners on special 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 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 4 provides:

"Extra stewards performing road service in place of a regular assigned steward, or on an extra assignment, will be paid for actual time worked, or deadheading, the same as regular assigned stewards."

By no stretch of the imagination could it be said that the claims are supported by the express provisions of these rules. There are circumstances under which claims for double compensation might be said to come within the purview of the rules by necessary implication. For, the rules clearly contemplate that, where more than one regular diner is put in service on regular trains, extra sections or special trains, a steward will be put in charge of each diner. But that is not the situation we have here. These counter cars are not diners in the sense the term is used in the contract. Running alone on an extra section or on a special train they would have no practical use. They are not equipped for cooking or storage—except for steam tables designed to keep food warm as it comes from the diner. Their practical value lies wholly as an immediate adjunct to a regular diner.

The sole use and purpose of the counter car is to augment the seating capacity of the regular diner. For all practical purposes a steward's responsibility is not any different nor any greater when his diner is hooked up to a counter car than it would be if the diner had twice its seating capacity. Giving the rules the most liberal interpretation, we do not think they require assignment of a steward to a counter car which is hooked up with a regular diner.

Consequently it cannot be held that these claims fall within the purview of the rules by necessary implication.

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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of April, 1944.