Award No. 3728
Docket No. DC-3779

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF RAILROAD TRAINMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Time claim of Steward H. A. Urban for November 28th, 1945, and subsequent dates on account of not being properly paid in accordance with Regulation 4-D-1 of Agreement effective January 16th, 1936.

EMPLOYES' STATEMENT OF FACTS: Steward Urban was regularly assigned to Line Nos. 2 and 3 which comprehended the following service:

DAY	TRAIN	REPORTING PLACE	TIME	RELIEVING PLACE	TIME	TIME ON DUTY
1	153	New York	1:00 PM	Washington	8:05 PM	7′ 05″
2	176	Washington	10:45 AM	Boston	10:10 PM	11′ 25″
3	177	Boston	9:15 AM	Washington	9:25 PM	12′ 10″
4	126	Washington	7:45 AM	New York	1:00 PM	5′ 15″
5	109	New York	5:25 AM	Washington	11:30 AM	6′ 05″
5	1/152	Washington	1:30 PM	New York	7:35 PM	6′ 05″
6	Layover					

On November 28, 1945, Mr. Urban reported at Sunnyside Yard, L.I.C. at 5:25 A. M., the scheduled reporting time for train No. 109. His regular assignment for that day comprehended the following:

TRAIN	REPORTING TIME		RELEASE TIME		TIME ON DUTY
109	N.Y.	5:25 AM	Wash.	11:30 AM	6′ 05″
1/152	Wash.	1:30 PM	N.Y.	7:35 PM	6′ 05″

The service he actually performed on that date was as follows:

TRAIN	REPORTING TIME		RELEASE TIME		TIME ON DUTY
109	SSY	5:25 AM	N.Y.S.	7:15 AM	1′ 50″
169	NYS	7:15 AM	Wash.	1:25 PM	6′ 10″
1/152	Wash.	1:25 PM	N.Y.	8:35 PM	7′ 10″

Claim has been presented in behalf of Mr. Urban for compensation for service performed on train No. 169 between New York and Washington, beginning at 7:15 A. M. and ending at 1:25 P. M. This claim is predicated upon the provisions of Regulation 4-D-1, which reads as follows:

> "4-D-1 Employes notified or called to perform extra duty, stock or strip cars or similar work on other than their regular assignment, (unless otherwise notified before leaving home), will be allowed a minimum of four (4) hours for four (4) hours' work

As late as the year 1945, certain proposals were made by the Brotherhood of Railroad Trainmen to change the rules for Stewards. One of the proposed changes was the substitution of the following for Regulation 4-D-1:

> "Section 5 (Article 4). Stewards required to perform service, such as stocking, transferring, stripping, or checking cars, shall be paid for actual time, at the pro rata hourly rate, with a minimum of four (4) hours, except as otherwise provided for in this Agreement."

All of the above clearly shows that Regulation 4-D-1, as understood and applied by the parties, pertains only to the stocking and stripping of cars, and other similar work, and that this is the only payment provided in the Agreement which is paid for separate and apart from the basic month's work of 240 hours. These facts, together with the fact already noted, that the Steward assignments have included a specific statement to the effect that regularly assigned Stewards may be used in any type of dining car service, serve to show that the Carrier has never agreed with the Employes to apply Regulation 4-D-1 in the manner contemplated by the present claim. To the contrary, the Carrier has uniformly taken the position that Regulation 4-D-1 is limited to the special circumstances which have been previously explained. And, significantly, the Organization involved in this case has made proposals which indicate the same understanding of the rule and they have not attempted, until the present claim, to broaden its scope beyond the limited interpretation which has always been applied.

Thus, it will be seen that the Agreement, in its various provisions, consistently supports the position taken by the Carrier in this case. The Carrier, therefore, respectfully submits that the time spent by the Claimant in the service on Train No. 169 has been properly paid for and applied against his basic month's work.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Agreement Between the Parties and to Decide the Present Dispute in Accordance Therewith:

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION.

It is respectfully submitted that the Claimant is not entitled to the additional compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant's regularly assigned run as a dining car steward on the day in question was on train 109 from New York City to Washington, returning on train 1/152 same day.

For his regular assignment he was required to report at Sunnyside Yard, New York at 5:25 A. M. Train 109 was due to arrive in Washington at 11:30 A. M. His schedule called for him to report in Washington at 1:30 P. M. for train 1/152 which was due to arrive in New York at 7:35 P. M.

On the day in question he reported for duty in the morning at the scheduled time, 5:25 A. M. On his arrival in the Pennsylvania Station he was transferred from his regular train to the dining car on train 169, on

which he made the trip to Washington, arriving at 1:25 P. M. He then returned to New York on his regular train, arriving at 8:35 P. M.

For the time spent on the dining car on train 169, between New York and Washington, claimant contends that he is entitled to extra pay under Rule 4-D-1 which provides:

> "Employes notified or called to perform extra duty, stock or strip cars or similar work on other than their regular assignment, (unless otherwise notified before leaving home), will be allowed a minimum of four (4) hours for four (4) hours' work or less; time worked in excess of four (4) hours will be computed on the actual minute basis."

The ordinary principles of construction would seem to require us to interpret the phrase "stocking or stripping cars or similar work on other than their regular assignment", as simply being an explanation of the words "extra duty" used immediately preceding said phrase. If the words "extra duty" were intended to include all possible types of extra duty, as contended for by the Claimant, the phrase following said words serves no useful purpose.

Some of the other paragraphs of this same Rule 4 provide different methods of payment for other types of extra duty which would also indicate that the words "extra duty" as used in Rule 4-D-1 were not intended to be all inclusive.

While the various claims made by the Organization, as to the amount of extra pay to which Claimant is entitled are not uniform, they are all made on the idea that he is entitled to payment for some time over and above the 240 hours on which his monthly rate is based. The Rule on Basic Rates of Pay in the Current Agreement expressly provides that:

> "Payment under Regulation 4-D-1 for stocking or stripping cars or similar work shall not be credited to the basic month's work."

It would seem that in this provision the parties have provided us with an express agreement as to what work under Rule 4-D-1 will not be considered as a part of the basic month's work; and in so doing have also indicated what they thought constituted "extra duty" within the meaning of said Rule.

Further light on the interpretation of this Rule by the parties is provided by certain negotiations between the parties in attempting to secure a change or amendment in this particular rule. For instance, the Brotherhood, on April 23, 1942, proposed the following rule which never became part of the agreement:

> "4-K-2. Regular stewards taken from their regular assignments or who do not follow the regular sequence of trains as set up in the Dining Car Schedule will be considered as having been run around and will be paid in no event less than they would have earned on their own assignment. If time earned by Steward who has been used out of line exceeds the amount he would have earned on his regular assignment the excess time will not be credited to the Basic Month but shall be paid as overtime."

This proposal would provide for payment in this case for only the **excess** time the claimant was on duty on train 169 over the time he would have been on duty on train 109, to which he was regularly assigned.

Further interpretation of Rule 4-D-1 by the Employes is shown by a rule which they proposed while negotiating the Current Agreement, which proposed rule was as follows:

> "1-F. Dining Car Conductors and/or Dining Car Stewards called to perform **other than road work service, such as,** stock or

strip cars or similar work on other than their own assignment, will be compensated at straight time rates for all time so engaged with a minimum of four hours' pay for four hours work or less, over four hours they will be paid a minimum day and over eight they will be paid on the actual minute basis. **Payment under this rule not to be charged against the monthly guarantee."**

While this proposed rule was not adopted, the idea of the employes, as set out therein was included in the Current Agreement under the paragraph on Basic Rates of Pay which provides, as we have shown above, that for stocking or stripping cars or similar work payment should not be credited to the basic months work.

Further interpretation of this rule by the parties is shown by the schedule which the Carrier filed as Exhibit A with its submission and which was the current schedule on the day for which this claim is made. The notes on that schedule contained the following provision:

"CARS AND CREWS ASSIGNED TO ALL LINES MAY ALSO BE USED—

for protect service; in any regular train other than that to which normally assigned; augmenting service in any regular train; in extra sections of any regular trains and in special train service."

While the Carrier could not change the agreement between it and its employes by adding such a notice to a published schedule of work, it does furnish evidence of the interpretation by the parties of this particular Rule of the agreement.

In view of the above, we do not believe that the services which claimant performed in the dining car on Train 169 was "extra duty" within the meaning of Rule 4-D-1.

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 respectfully 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 the claimant is not entitled to compensation under Rule 4-D-1 as claimed.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1947.