

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim for Dining Car Steward C. M. Murray, for continuous time for August 2, 1944, until released time at Cincinnati, August 3, 1944, and for all other Stewards on subsequent dates.

EMPLOYEES' STATEMENT OF FACTS: Steward C. M. Murray, regularly assigned to Dining Car No. 1041 in group No. 74 and working schedule No. 75 reissued, including supplements No. 1 to 47 inclusive, as of February 25, 1944, Washington, D. C. to Cincinnati, Ohio with home terminal Cincinnati. Scheduled to leave Washington, D. C. on train No. 11 at 7:55 A. M. arriving Cincinnati, Ohio at 11:55 P. M. On August 2, 1944 upon arrival at Chillicothe, Ohio, an intermediate point, Steward Murray was held from 9:20 P. M. until 4:00 A. M. August 3, 1944 to operate special train from Chillicothe, Ohio to Cincinnati, Ohio being finally relieved August 3rd at 1:00 P. M..

CARRIER'S STATEMENT OF FACTS: Steward C. M. Murray was regularly assigned to Dining Car No. 1041 in Group No. 74 found in Working Schedule No. 75, dated December 6, 1942. On August 2, 1944 Steward Murray and his car were cut out at Chillicothe, Ohio; on August 3, 1944 Steward Murray and his car were used to protect military movement from Chillicothe to Cincinnati, Ohio.

POSITION OF EMPLOYEES: Steward Murray was regularly assigned to straight-away service and should be paid continuous time from Washington, D. C., to Cincinnati, Ohio, the home terminal of his assignment without any deduction of time held at Chillicothe.

For the information of the Board, we are quoting the following rules from the Dining Car Stewards Agreement in effect on the B. & O. Railroad:

RULE 3 Time on Duty.

"(a) On straightaway runs stewards' time will be computed as continuous from the time required to report for duty at the terminal of the run, until released at the other terminal of the run, subject to release each night between the hours of 10:00 P. M. and 6:00 A. M., as covered in Rule 6. If required to perform service after 10:00 P. M. or before 6:00 A. M. such time will be paid for on the minute basis.

(b) In turnaround service on regular assignments, time of stewards will be computed continuously from time they are required to report for duty and do report, until finally released from duty, provided that no time will be deducted at turn-around, set-out or

steward is subject to release each night between the hours of 10:00 P. M. and 6:00 A. M. For this reason, the Carrier submits that Rule 3 was properly applied in the case of the claimant.

In view of the above, this Carrier submits that the Rules contained in the Dining Car Stewards' Agreement do not support this claim.

III. The Awards Of This Division Do Not Support This Claim.

This Carrier submits that the Awards of this Division do not support this claim.

This Division has decided numerous cases on the simple basis of whether or not there was violation of the rule or agreement.

In Award No. 1401 this Division with Referee Royal A. Stone held:

"That no violation of the Rule is shown."

In Award 1431 this Division again with Referee Stone held:

"That there was no violation of the Rule."

In Award 3310 this Division with Referee Robert G. Simmons held:

"That the Claimant has not shown a violation of the rule.

The Carrier has shown a good faith compliance."

In Award 3322 this Division again with Referee Simmons held that:

"The violation of the clear meaning and purpose of the rule being admitted, the finding necessarily is that the Carrier has not violated the Agreement and has not abused its discretion in dismissing the Claimant under the facts here shown."

In Award 3352 this Division with Referee Ernest M. Tipton held:

"That the Carrier has not violated the Agreement as contended."

In each of the above cited Awards the Divisions denied the claim.

The Carrier properly applied the applicable provisions of Rule 3 of the Dining Car Stewards' Agreement in the case of the claimant steward.

Therefore, this Carrier submits that the Awards of this Division do not support this claim.

In view of all that is contained herein, this Carrier respectfully requests this Division to find this claim as being without merit and to deny it accordingly.

OPINION OF BOARD: Steward C. M. Murray was regularly assigned to Group No. 74, Working Schedule No. 75 reissued, including Supplements Nos. 1 to 47, inclusive, as of February 25, 1944. On August 2, 1944 while on a run in that Working Schedule, leaving Washington, D. C. on Train No. 11 at 7:55 A. M. to arrive Cincinnati, Ohio, at 11:55 P. M., he along with his dining car upon arrival at Chillicothe, Ohio, an intermediate point, was cut out and there held from 9:20 P. M. until 4:00 A. M. the following morning. He was then used on a special train from Chillicothe to Cincinnati, being finally relieved August 3 at 1:00 P. M.

The contention of the petitioners is that Steward Murray should be paid continuous time from Washington to Cincinnati without any deduction of time held at Chillicothe, reliance being placed upon Rule 3 (a).

In addition to Rule 3 (a) the Agreement contains a rule (Rule 1) providing for a basic month of 240 hours for which various monthly rates of pay are stated. It also contains a rule (Rule 10) providing for a schedule of dining car runs and assignments to be arranged to restrict stewards as

nearly as practicable to 240 hours' service each calendar month consistent with service requirements. Working Schedule No. 75 Group 74, though not shown in full in the record, is referred to by the parties as being in effect and applicable in the circumstances of this dispute without contention that it is not in compliance with the Agreement. It accordingly is accepted as being in compliance therewith.

When Steward Murray was cut out of his regular assignment at Chillicothe on the night of August 2 and used on Special train leaving Chillicothe early in the morning August 3 for Cincinnati he was protected in respect to his earnings and to his return to his regular assignment by rules 1, 3 (a), and 12.

The record discloses that for the service other and additional to that of the run of his regular assignment following the cut-out at Chillicothe on August 2, 1944, pay was allowed for this other service until final release therefrom at 1:00 P. M. at Cincinnati, August 3, 1944, as provided by Rule 3 (a). However, it is not shown whether the total allowance and pay for Steward Murray for the involved month of August, 1944 was or was not in excess of the basic period of 240 hours per month.

Steward Murray is due an allowance of total hours of service for the month of August, 1944, including the hours of service following the cut-out at Chillicothe for which other and additional service payment has been made. If the total hours of service for the month thus allowed was in excess of 240 hours, he is due to receive additional to his stipulated monthly rate of pay an allowance of hours and pay at the overtime rate for such excess over 240 hours. Conversely if the total hours of service for the month thus allowed is not in excess of 240 hours, no additional pay is due.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 claim will be remanded for disposition in accord with the Opinion.

AWARD

Claim remanded for disposition in accord with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1948.