

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: This claim is filed on behalf of Casey Stroud, L. Dodson, W. R. Powell, N. A. Dunegan, G. C. Willis, William Watkins and James Hayward, employees of the Dining Car Department of the carrier, who were not paid the basic guaranteed wage for the month of July, 1947 as provided by Rule 3 of the existing agreement.

We further claim that Rule 3 of the existing agreement has been violated in that these employees were regularly assigned on Trains 1 and 10 operating between Chicago, Illinois and Denver, Colorado and that a cancellation of this run during a period of flood waters in the Nebraska and Iowa areas does not relieve the carrier of his responsibility under Rule 3 of the agreement.

We claim that these and other employees of the carrier so affected be compensated for the difference in the number of hours paid for the month of July as against the number of hours guaranteed under the terms of Rule 3 of the agreement.

EMPLOYEES' STATEMENT OF FACTS: On June 23, 1947, the Chicago, Burlington and Quincy Railroad Company issued bulletin No. 48, Notice of Cancellation of Run, to dining car employees C. Stroud, L. Dodson, W. R. Powell, N. A. Dunagan, G. C. Willis, W. Watkins and J. Hayward. The runs cancelled by this bulletin were runs which were considered regular assignments and on which these employees had made bids and been assigned as a result of these bids. During the period mentioned, flood waters in Iowa and Nebraska prevented the movement of trains through that area. Other runs were cancelled for the same reason which have resulted in this claim being filed for other employees similarly situated.

The contract between the Chicago, Burlington and Quincy and this organization provides for a basic monthly guarantee of 240 hours of pay for all employees regularly assigned even though such hours are not entirely consumed by the work of the employee. A copy of rule 3 of the Agreement referred to is attached as Exhibit A.

POSITION OF EMPLOYEES: The contract entered into by this organization and the CBQ Railroad Company was consummated for the purpose of providing satisfactory wages, hours and working conditions for employees represented and to provide security and continuity of employment. Rule 3 of the Agreement referred to as Exhibit A is one of the provisions of the Agreement which assured a minimum monthly guarantee to employees regularly assigned. This rule is not modified in any respect. It places upon the carrier the responsibility of a payment for 240 hours to all employees regularly as-

"The evidence of record discloses that claimant's assignment to Train 9 and 10 was cancelled June 10 and was readvertised and assigned June 18. This is supported by the fact claimants exercised their seniority during period assignment was cancelled.

"The Division holds that claimants are entitled to guarantee provided for in Article 4 June 1 to 9, both inclusive, and June 18 to 30, both inclusive, regardless of other earnings paid for other service."

See also First Division Awards 3528, 3529, 3531, 3555, 3556, 3557, 7453.

In the instant controversy it is clearly and irrefutably evidenced by Carrier's Exhibits Nos. 2 and 3 that the cancellation and re-bulletining of the assignments involved in the instant controversy was handled in strict conformity with the principle established by the foregoing awards.

At this point attention is directed to paragraph (d) of Rule 5 of the controlling collective agreement, reading:

"Rule 5. (d) In the event constructive hours are allowed on a particular assignment to make up a monthly guarantee and more than one employe performs service on such assignment, the constructive hours shall be divided between the employes who rendered service thereon in the same ratio as the hours worked by each employe bear to the basic month of two hundred and forty (240) hours."

The provisions of this rule make it unmistakably clear that the basic month guarantee applies to assignments and not to individuals, inasmuch as when one or more employes work on a particular assignment, guarantee payments are divided between the employes rendering service thereon in the same ratio as the hours worked by each employe bears to the basic month of 240 hours.

In conclusion, the Carrier avers that the claimants were not "regularly assigned" within the meaning of Rule 3, in consequence of which the provisions thereof are inapplicable, and the instant claim must, therefore, in all things be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 23, 1947, the Carrier cancelled a regularly assigned run of the dining car employes herein shown as claimants, because of floods which prevented the movement of trains. The Carrier contends that this situation makes inapplicable the monthly guarantee rule relied upon by the Organization. This rule provides:

"Two hundred forty (240) hours or less of service shall constitute a basic month's work for regularly assigned employes, the term 'service' to be defined to mean time actually worked in accordance with the provisions of Section 1 (a) and (b) of Regional Agreement to which the signatories hereto are parties hereinabove referred to. All time actually worked in excess of two hundred forty (240) hours shall be paid for as overtime on the minute basis at punitive hourly rates, such rates to be arrived at by dividing the established monthly rate by two hundred forty (240) and time and one-half of the result of that calculation shall be the punitive hourly rate.

"The same principle shall be applied to unassigned employes." Rule 3, current Agreement.

It is the contention of the Carrier that the monthly guarantee applies only to regular assigned employes and, as here, where positions are properly abolished, the guarantee does not apply to the partial month worked. The monthly guarantee is a part of the Agreement because of the nature of the work of dining car employes. They are given a monthly assignment which, because of layovers and the intermittent nature of the work, is subject to much uncertainty as to whether eight hours' work can be performed on many days of the assignment. Because of this situation, an employe who fills his

monthly assignment is guaranteed a minimum number of hours, here 240 hours per month. Consequently, an employe who fills his assignment to the extent that the service permits will receive credit for a monthly minimum of 240 hours.

When, however, there is no work to be performed for a part of the month and the position is properly abolished, the 240 hour minimum must be treated as a basic guarantee for the monthly assignment. That the Carrier properly abolished the positions cannot be questioned. Floods preventing train operations eliminated the work of dining car employes without fault of the Carrier and subjected their assignments to cancellation. We hold that the claim of the employes for a 240 hour minimum month is not well taken under the circumstances shown. In the present case, the positions were not re-bulletined until July 9, 1947. The amounts paid claimants for the month of July, 1947, are far in excess of the basic application of the monthly guarantee of 240 hours. We need not concern ourselves, therefore, with calculating the basic amount of the guarantee for July, 1947, as it would apply to these claimants.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.