Award No. 5210
Docket No. DC-5167

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes' Union, Local 351, on property of Chicago and North Western Railway Company, for and on behalf of Cleveland Bennett and other employes similarly situated, that they be paid the difference between what they were paid and what they should have been paid during the month of February, 1949, as provided for in Rule 3 (a) and Wage Schedule Appendix of the current agreement.

EMPLOYES' STATEMENT OF FACTS: Claimant and other employes similarly situated were employed as dining car crews on Trains 1 and 2 (City of Los Angeles) and Trains 101 and 102 (City of San Francisco), during the months of February, 1949. Carrier failed to compensate claimant and other employes similarly situated for a full month's wages for the month of February, 1949. Claimant and other employes similarly situated were ready for service in the entire month of February, 1949 and lost no time on their own account.

Claimant and other employes similarly situated were regularly assigned to dining cars of Trains 1 and 2 and Trains 101 and 102 as of February 1, 1949.

The pertinent provisions of the current agreement, Rule 3 (a) and 3 (b) provide as follows:

> "3 (a) Except as provided in Rule 12, two hundred forty hours or less, in regular assignment, will constitute a month's work for employes ready for service the entire month, and who lose no time on their own account.
>
> (b) When an employe holding a regular assignment lays off of his own accord, he shall be paid the full monthly guarantee less amount he would have earned on his regular assignment during his absence."

POSITION OF EMPLOYES: Employes contend that Rule 3 (a) of the current Agreement, in February, 1949 required Carrier to compensate claimant and other employes similarly situated on the basis of a full monthly guarantee of two hundred forty hours or on the basis of a full month's work. Carrier failed to compensate employes on such contractual guarantee basis. This failure constitutes a violation of Rule 3 (a). The language of Rule 3 (a) is clear that the only exception to the guarantee of a full month's pay

In handling this case in conference May 2, 1949 representative of the employes took the position that when an assignment is in effect on the first day of the month, the employes assigned thereto are entitled to a minimum of 240 hours compensation for any service on such assignment regardless of what day of the month the assignment may be abolished.

It is the position of the carrier that the basic month of 240 hours or less, as referred to in rule 3(a) applies to assignments that are in effect during the entire calendar month and to employes regularly assigned thereto and working thereon during the entire month but where assignments are properly abolished the basic monthly guarantee of 240 hours does not apply to the partial month's work on such assignments. In other words when there is no work to be performed on a regular assignment for part of a month and the assignment is properly abolished, the basic monthly guarantee is prorated on basis of days assigned. Emergency conditions beyond the railway company's control in February 1949 which prevented train operations and eliminated the work on dining cars subjected such assignments to abolishment and the railway company properly abolished same.

Further in support of its position the carrier invites this Board's attention to its Award 4065 where under "Opinion of the Board" it stated:

> "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."

(Exhibits not reproduced.)

OPINION OF THE BOARD: These are claims by monthly rated employes for their full monthly rates of pay for a month in which the Carrier made reductions in the monthly pay by reason of suspension of service due to inclement weather.

On February 19, 1949, the Carrier gave a notice to Claimant and other employes similarly situated as follows:

> "Effective 12:01 A. M. February 20, 1949, all positions of Dining Car Cooks, Waiters, Pantrymen, Bus Boys, Waiters in Charge, Lounge Car Attendants and Train Bartenders on Trains 101-102, 'City of San Francisco' will be cancelled. It is anticipated that this train will operate tri-weekly starting February 24, 1949."

The action was occasioned "due to impassable route as result of storm conditions and snow blockades"; and the Carrier accordingly pro-rated the regular February monthly rate of Claimant and the others.

The claim for the full monthly rate is based on Rule 3 which reads as follows:

"BASIC MONTH.

> 3. (a) Except as provided in rule 12, two hundred and forty hours or less, in regular assignment, will constitute a month's work for employes ready for service the entire month, and who lose no time on their own account.
>
> (b) When an employe holding a regular assignment lays off of his own accord, he shall be paid the full monthly guarantee less

amount he would have earned on his regular assignment during his absence."

The employes involved were ready for service the entire month and lost no time on their own account. This is undisputed except in the sense of the Carrier's contention that nobody can be ready for a service which does not exist.

First. In view of Award 4065 all of these positions could have been abolished with reduction in the monthly rates for time not worked thereafter, if the Carrier had manifested an intention to abolish the positions. But this the Carrier did not do.

While it is true that the first sentence of the notice categorically abolished the positions, the second sentence is reasonably susceptible of an inference that the positions would still be available to the incumbent employes when it was anticipated the service would be resumed; and this inference is confirmed by the failure of the record to disclose that, when the service was resumed, the Carrier did bulletin the positions as required by Rule 24 of the Agreement. In view of Awards 3680, 3715, 4170 and 4821 the conclusion follows that there was no intention to abolish these positions and they accordingly continued to exist during the temporary suspension of service.

Second. Since the positions were not abolished, the question is whether the Agreement was violated by the reductions in the monthly rates of pay on account of the lay-offs during the inclement weather.

Rule 3(a) by its own terms provides that less than 240 hours, in regular assignment, will constitute a month's work, if the employes are ready for service the entire month and lose no time on their own account. And Rule 3(b) read together with 3(a) indicates that reductions of "the full monthly guarantee" will not be made except when an employe holding a regular assignment lays off of his own accord.

The nature of the work of these employes is intermittent, subject to layovers and uncertainty whether 8 hours' work can be performed on many days of the assignment. It seems clear that a minimum of 240 hours is paid for, though the employe works less, if he is ready to fill his assignment to the extent the service permits.

It is unavailing to argue that, since the employe does not promise to serve the entire month, there is no "mutuality of promises", because the employe suffers a reduction in the monthly rate of pay if he lays off of his own accord or if the position is in fact abolished when the work disappears by reason of circumstances beyond the control of the Carrier.

Since the Carrier did not abolish these positions and since the Claimants did not lay off of their own accord, the Carrier violated the Agreement by making these reductions in the monthly rates of pay (Awards 320, 759, 805, 1010 and 1131; and see 3680, 3715, 4065 and 4170).

The claim is made on behalf of Cleveland Bennette (Bennett), chef cook, and "others similarly situated", who are specified in the notice above quoted; and also others similarly situated on Trains 1 and 2.

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 the Agreement has been violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of February, 1951.