

Award No. 9779

Docket No. DC-8879

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

**THE AMERICAN RAILWAY SUPERVISORS ASSOCIATION
NEW YORK CENTRAL SYSTEM**

STATEMENT OF CLAIM: It is the claim of the General Committee of the American Railway Supervisors Association on the New York Central System that Dining Car Stewards Arnst, Christian, and others shall be compensated 14 hours and 50 minutes, total time on December 19, 1954 and January 1, 1955, which is the earnings of their regular bid assignment on trains No. 40 and No. 41 operating between Buffalo and Albany.

EMPLOYEES' STATEMENT OF FACTS: On December 19, 1954 and January 1, 1955 Dining Car Stewards Arnst and Christian were arbitrarily removed from the regular assignment trains No. 40 and No. 41 operating from Buffalo to Albany and returned on the same day. Respondent's independent action necessitated those aggrieved to run from Buffalo, New York to New York City, New York and in some cases necessitated a layover of one night at Albany which precluded the claimants' return to Buffalo on the same day. Because of Respondent's unilateral action those aggrieved were not permitted to complete their bid run as posted within the day allowed nor to earn the time allowed. Hence, it is the position of the Petitioner that because of Respondent's violative action between and on the dates in question that all stewards assigned to this run shall be compensated additionally in accordance with past practice over the years under certain similar circumstances and under the terms of Article IV(n) of the contract.

POSITION OF THE EMPLOYEES: There is an agreement in effect dated March 1, 1948, with amendements up to date, between the Petitioner and the Respondent applicable to Dining Car Stewards. Petitioner relies upon Article IV, Time Allowances, Section (n), captioned, "Taken Out of Regular Assignment," which reads as follows:

"When regularly assigned stewards are taken out of their assignment and used in other service to which dining car stewards may be assigned they shall be paid at the rate applicable to the service performed or the earnings of their regular assignment, whichever is greater, for the period so used. A steward will not be considered taken out of his assignment so long as he remains in his regular line or pool."

assignment, nor shall he suffer loss of his regular layover days at home or away from home points. If required to work on such layover days, he shall be paid overtime in accordance with Article 3, section 7."

It will be noted the rule as originally requested by the Employees contained a provision to the effect that a steward held from his regular assignment should not "suffer loss of his regular layover days at home or away-from-home points." It is significant that this provision was not included in the rule to which the Carrier subsequently agreed. This indicates clearly that for the purpose of applying Article IV(n) a scheduled layover day may form a part of the "period so used" the same as any regularly scheduled working day.

The "period so used" in the case of Steward Arnst was December 17 and 18 and in the case of Steward Christen, December 30 and 31. As Carrier's Exhibit G shows, Mr. Arnst received 9 hours 25 minutes and Mr. Christen 11 hours 16 minutes in these periods, respectively, in excess of the time each would have earned had he not been required to operate through to New York.

3. Stewards Arnst and Christen have been fully compensated in accordance with Article IV(a) for all service performed.

Article IV(a) of the rules agreement provides that "Stewards shall be considered on duty and under pay from time required to report and do report until released from duty." As Carrier's Exhibit G shows, this rule was fully complied with respecting service performed by Stewards Arnst and Christen during the period of this claim.

* * * * *

For the reasons cited in the foregoing, the Carrier respectfully submits that the claim of the Employees in this case is without merit and should be denied.

All of the facts and arguments set forth herein were made known to the Employees in the handling of the claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner has failed to show that the named Claimants or any others performed work on other than their regular assignments, or otherwise, on either of the two claim dates. There is no proof in the record of any violation of the Agreement on the dates alleged in the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole records and all the evidence, finds and holds:

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1961.