

Award No. 10447
Docket No. PC-10239

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen files a claim for and in behalf of Conductor E. C. Fallon, in which the Organization contends that Rules 35 and 33 of the Agreement between The Milwaukee Road and its Parlor Car Conductors were violated when:

1. Under date of May 12, 1957 Conductor Fallon was not given an assignment to report in Chicago at 10:45 P.M. to deadhead on train #1 from Chicago to Minneapolis, with credit of 9:55 hours, to protect train #2 out of Minneapolis on May 13, with a reporting time in Minneapolis of 11:45 A.M., release time Chicago, 7:30 P.M. same date.

2. Because of this violation we now ask that Conductor Fallon be credited and paid 9:55 hours for a deadhead trip, Chicago to Minneapolis, and for 1¼ days for a service trip on train #2, Minneapolis to Chicago, under the applicable rules of the Agreement.

EMPLOYEES' STATEMENT OF FACTS:

I.

There is an Agreement between the parties, bearing the effective date of January 1, 1951 on file with your Honorable Board and by this reference is made a part of this submission the same as though fully set out herein.

For ready reference and convenience of the Board, the most pertinent parts of Rules which are directly applicable to the dispute are quoted as follows:

"RULE 35. OPERATION OF EXTRA CONDUCTORS

"(a) All extra work, including work arising at points where no seniority roster is maintained, shall be assigned to the extra conductors when available.

The employees have questioned the Carrier's right to excuse Claimant Fallon from service as parlor car conductor. We think, under the circumstances prevailing, the Carrier had a right to excuse Conductor Fallon from service as extra parlor car conductor under the provisions of Rule 46—LEAVE OF ABSENCE. However, we do not agree that the Carrier's right or obligation to excuse Claimant Fallon from service as a parlor car conductor has anything whatever to do with this dispute. The Carrier had the obligation, by contract, to recall Mr. Fallon from furlough as dining car steward and Mr. Fallon voluntarily accepted that recall and performed service as dining car steward under the rules of the Dining Car Stewards' Agreement. He made his choice of service and chose to perform service as a dining car steward, a classification in which he held his original seniority date with this Carrier. Any question of his seniority rights as a parlor car conductor followed his election to return to service as dining car steward. It is even questionable as to whether or not he properly retained his rights as parlor car conductor under the conditions prevailing. However, neither the employees nor the Carrier have challenged his retention of those seniority rights. The fact remains, however, that on May 4, 1957 he accepted service as a dining car steward and from that date forward, through the two dates involved in this claim, he performed service as dining car steward under the Dining Car Stewards' Agreement in connection with which he held seniority rights in that class and rights to the dining car steward service which he was called upon to perform. There was no way for him to be available for service as extra parlor car conductor on May 12th and 13th, 1957 other than for him to have made an election not to return to service as dining car steward on May 4th, 1957 in which event he would have forfeited his rights as dining car steward and would have retained his seniority as parlor car conductor and would have been used as extra parlor car conductor for the service which he stood under the Parlor Car Conductors' Agreement. However, he elected, instead, to perform service as dining car steward and by his own actions he was unavailable for service as extra parlor car conductor on May 12th and 13th, 1957. The Carrier paid for parlor car conductor service not performed on Train 15 May 12th, 1957 (Conductor Hockenbury) and for parlor car conductor service performed on Train 2 May 13th, 1957 (Conductor Michau) in addition to the above-normal expense represented by the deadhead trip of Conductor Michau on Train 1 May 12th, 1957 and there can be no justifiable reason why the Carrier should again pay for such service.

There is absolutely no merit whatever in the claim which the employees have filed in behalf of Claimant Fallon and we respectfully request a denial award.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner filed this claim "for and in behalf of" E. C. Fallon. He was first employed by the Carrier as a Dining Car Steward on November 22, 1956 and established seniority on that date under the rules of the Agreement between the Carrier and the Brotherhood of Railway Trainmen covering that craft and class. In January, 1957, he was furloughed as Dining Car Steward on force reduction. On January 11, 1957, Claimant obtained employment with the Carrier and established seniority as a Parlor Car Conductor under the Agreement between the parties.

The facts upon which the claim is predicated are not in dispute. On May 12, 1957, the Parlor Car Conductor who was scheduled to operate on Train 15, Chicago to Minneapolis on May 12, and on Train 2, Minneapolis to Chicago on May 13, reported off sick. On May 12 Train 15 operated Chicago to Minne-

apolis with two parlor cars in service but without a Parlor Car Conductor; and a subsequent claim which stemmed from this situation was paid by the Carrier. However, on May 12 the Carrier deadheaded regularly assigned Parlor Car Conductor Michau Chicago to Minneapolis on Train 1 to protect Train 2 Minneapolis to Chicago on May 13, and he performed such service on that date.

Prior to the occurrence of these events, the Carrier recalled Claimant from furlough as Dining Car Steward in accordance with the rules of the Agreement applicable to that service and Claimant accepted such recall, returning to service in that capacity on May 4, 1957. On May 12 and May 13, he was in such service on Train 15 into Tacoma, Washington, and on Train 16 from that point.

Relying on Rules 33 and 35, Petitioner contends that since Claimant held seniority as a Parlor Car Conductor, the Carrier violated the Agreement when it assigned him as a Dining Car Steward and failed to assign to him the extra work as Parlor Car Conductor on the claim dates, as provided in Rule 35.

Carrier defends on the grounds that Claimant voluntarily accepted recall from furlough as Dining Car Steward in accordance with the Agreement which established his seniority in that capacity and that on the claim dates he was in that service.

The undisputed facts establish that the Carrier recalled Claimant from furlough as a Dining Car Steward pursuant to his seniority under the rules of the Agreement which covered that service, that on May 4, 1957, Claimant accepted the recall in accordance with such seniority, and that on the claim dates he was in service as a Dining Car Steward. We are not referred to any rule in the Agreement between the parties which obligated the Carrier not to recall Claimant from furlough as Dining Car Steward, or to reject Claimant's desire to resume service on such recall in that capacity because he also held seniority as a Parlor Car Conductor. Compare Award 9386. In the absence of such rule, there is no basis for holding that Rule 35 was violated under the circumstances presented. See Award 9852. Rule 33 is clearly inapplicable.

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

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1962.