

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: That Dining Car Steward Peter A. Nielsen should be paid the same number of hours as allowed one extra cook and two extra waiters, added to the crew of five, on train No. 124, departing Los Angeles, California, October 7, 1960 to Lamy, New Mexico, and return.

EMPLOYEES' STATEMENT OF FACTS: Steward Peter A. Nielsen was available on the extra board at Los Angeles when train No. 124, with Dining Car No. 1478, departed from that terminal with a crew complement of eight men with a waiter-in-charge acting as Steward. One extra cook and two extra waiters were released at Lamy, New Mexico 969 miles — 22 hours, for return deadhead to Los Angeles, train No. 123.

The Dining Car and Hotel Department advises this special movement of 54 people was contracted by the San Fernando Valley and Tour Agency, and was enroute to Mexico City. (Coast Lines Transportation Advice P-382 dated September 30, 1960).

The claim has been handled through the regular channels and denied by the highest officer.

POSITION OF EMPLOYEES: It is the Committee's position that the rules and agreements, as hereinafter shown, have been violated:

"Article III — Hours of Service and Time Allowances

Section 1(a). Two hundred five (205) hours, credited as hereinafter provided, shall constitute a basic month for regularly assigned Stewards who are ready for service the entire month and who do not lay off of their own accord, or who are not laid off in force reduction.

NOTE: This Section 1(a) shall not apply to extra, temporary or furloughed stewards who will be credited with the hours on each run and compensated therefor at the rates of pay specified in Article

(A total of 32½ hours was claimed on extra board Steward Nielsen's time slip.)

The existing Agreement between the Dining Car Stewards and the Carrier provides penalty for failure to call extra board stewards in turn in the following:

ARTICLE IV, SECTION 15 (First Paragraph) —

"Stewards assigned to extra board shall work in rotation, that is, first in, first out, subject to Section 11 of this Article. The Company shall be required to notify the Steward only by telephone, the number of which the Steward must register with the proper official of the Company. In order to protect his rights the Steward must report at the time designated by the Company to report. A Steward having registered a telephone number with the proper official of the Company and **not called in turn for a position for which he was qualified shall receive 1/30th of the basic monthly rate applicable to the position for which he should have been called, and retain his standing on the extra board.**" (Emphasis ours)

This faulty claim for a greater penalty pay than provided in the existing Agreement was called to the attention of the Committee during conferences but the Organization continued to progress its claim for the higher amount.

The Carrier respectfully reasserts that the claim presented by the Organization is not valid in that it is contrary to rules established to cover situations exactly as existed in this particular case. The claim should be dismissed or denied for the reasons expressed herein.

All that is contained herein is either known or has been available to the employees or their representatives.

OPINION OF BOARD: The facts are not in dispute. On October 7, 1960, the regular five-man dining car crew on a train operated between Los Angeles, California, and Chicago, Illinois, was increased by the assignment of one extra cook and two extra waiters for a portion of the trip (Los Angeles to Lamy, New Mexico) for the purpose of serving a party of 54 additional passengers who were on a special tour enroute to Mexico City.

Claimant was on the Stewards' extra board and available when the train left the Los Angeles terminal. The claim is based upon Petitioner's contention that Carrier's failure to use Claimant as the Dining Car Steward on the train was a violation of the Agreement.

Rules applicable here are the "new" Scope Rule of the Agreement entered into on July 18, 1956, and the "Supplement" to that Agreement contained in a letter of understanding signed and approved by these parties on the same date. These appear in the Submissions and need not be quoted in full at this point. It is sufficient for decisional purposes here to say that Paragraphs (b) and (c) of the effective Scope Rule mean that a Dining Car Steward will be placed in charge of each dining car where six or more employees (including the Steward) are used to prepare and serve food and drink. **Exceptions** to the foregoing, which are pertinent here, are as follows:

* * * * *

"Special assignments where extra board or regularly assigned Stewards are not or cannot be made available;"

"Brief increase in the number of employees in a crew occasioned by a temporary special movement;"

* * * * *

Claimant, admittedly was "available" for use on this trip; hence, the first exception quoted is not applicable. Thus, the only question to be answered is, do the facts here place the case within the purview of the second exception? The answer is "yes". The evidence shows that the time and mileage worked by the increased crew was a relatively small portion of the total worked by the regular crew. Manifestly, the increase was of comparably brief duration, and was occasioned by a movement that was temporary and for a special purpose. Under the facts of this particular case, we think the exception is clearly applicable and that, therefore, there was no rule violation.

The Petitioner's theory that the exception relating to availability in some way modifies or abrogates the provisions of the other quoted exception cannot be accepted as sound. Each exception is designed specifically to meet a particular set of facts; each is independent of the others, and may not properly be qualified or modified, as has here been suggested. (Award 9198).

Accordingly, the Board concludes that this claim lacks rule support and must, therefore, be denied.

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 26th day of April 1963.