Award No. 11654
Docket No. DC-11254

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 351

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union Local 351 on the property of Erie Railroad Company, that regular schedule on Trains 1 and 2, and 5 and 6, being in excess of 205 hours per calendar month, is in violation of Rule 6(a) of the confronting agreement, and that said schedule, since inception, is a continuing violation of said rule; and that carrier reduce said schedule on each of said Trains 1 and 2, and 5 and 6, to 205 hours or less per calendar month.

EMPLOYES' STATEMENT OF FACTS: Under date of April 17, 1958, organization's General Chairman filed the instant claim on the property, with Carrier's Manager Dining Cars (Employes' Exhibit "A"). Under date of April 28, 1958, Carrier's Manager Dining Car Department denied the claim on the property (Employes' Exhibit "B").

Under date of May 16, 1958, Organization's General Chairman appealed the denial of the claim to Carrier's Assistant to Vice President, the highest designated officer on the property, to consider such appeal (Employes' Exhibit "C"). Appeal conference was held on June 30, 1958. Under date of July 9, 1958, Carrier's Assistant to Vice President advised Organization's General Chairman that the claim was denied on appeal (Employes' Exhibit "D").

The facts in the instant claim are undisputed. The record is clear that Carrier has established a regular schedule on Trains 1 and 2, and Trains 5 and 6, in excess of 205 hours per month.

POSITION OF EMPLOYES: Employes contend that establishment of regular schedules in excess of 205 hours per month is in violation of Rule 6(a) of the confronting agreement. The confronting agreement between the parties became effective May 1, 1945. Copy of the agreement is on file with this Board and is incorporated herein by reference. For the convenience of the Board, Rule 6(a) of the current agreement is set out as follows:

> "(a) Two Hundred Five (205) hours shall constitute a basic month's work for regularly assigned employes who are ready for service and who do not lay off of their own accord. For the purpose

language of an agreement on the presumption that every word, phrase and clause was included for a purpose. In Award 3842, the Board said:

> ". . . all inter-related provisions of a contract, whether they be in a single paragraph, rule, article or section, or several, must be considered as a whole and also in their relation to each other."

To the same effect are Awards 5267, 6258 of this Division.

Consistent with the above principle, the Board follows the principle of preserving the integrity of Agreements. In Award 6856, the Board ruled:

> "It is presumed that all of the contentions and arguments of the parties are merged in the written agreement. A party is not permitted to go behind his written agreement and offer special knowledge on the intent of plain provisions. It is conclusively presumed that all such matters were considered and incorporated in or left out of the agreement to the extent that the written contract shows. The integrity of written agreements requires that they be so construed. The meaning of a written agreement must be gathered from the language used in it where it is possible to do so. The meanings of written contracts are not ambulatory and subject to undisclosed or rejected intentions of either of the parties. Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible."

Summarizing its position on the merits of this case, the Carrier has shown that there is not one word or line contained in the confronting Agreement which says or can be construed to say that the Carrier has bargained away its rights to establish regular assignments in excess of 205 hours per month. In this situation, it is axiomatic that the Carrier is allowed to do anything not prescribed or limited by the Agreement or by law. Award 6001. See, also, Award 5006.

Throughout the handling on the property, Petitioner merely assumed that its alleged violation was sufficient to support its contention. Contrary to such assumption, this Board has made it perfectly clear that the burden of establishing facts sufficient to require or permit the allowance of a claim is upon the person who seeks its allowance. Awards 3523, 6018, 5040, 5967, 6207, 5856, and many others.

Under the rules here involved, the Carrier submits that Petitioner falls far short of meeting its burden. The rule 6(a) cited by Petitioner in presenting its case to this Board lends no support to the claim herein.

The Carrier has established that there has been no violation of the Agreement. The Carrier submits that the claim is without merit and it should, therefore, be denied.

All data herein have been presented to or are known to Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: The sole question before this Board is whether the Carrier has the right to schedule and maintain assignments in excess of 205 hours a month. The applicable and controlling provisions in the Agreement are the following sections of Rule 6:

"(a) Two hundred five (205) hours shall constitute a basic month's work for regularly assigned employes who are ready for service and who do not lay off of their own accord. For the purpose of making up the 205 hours, regularly assigned employes may be used to perform service between trips or on lay-over days.

"The 205 hour basic month for regularly assigned employes may be reduced when employe lays off or is suspended, by deducting the number of hours that would have been paid had he remained in service.

"All time on duty in regular, extra or other service, and deadhead allowances, will be considered as service hourage.

"Extra employes shall be paid for the number of hours actually worked at 1/205 of the appropriate monthly rate.

"(b) All time actually worked in excess of 205 hours in any one month up to and including 240 hours shall be counted as overtime and shall be paid for on the actual minute basis at the straight hourly rate.

"All time actually worked in excess of 240 hours in any one month shall be counted as overtime and shall be paid for on the actual minute basis at one and one-half (1½) times the straight hourly rate.

"Time paid for but not actually worked under Rules 6(h), (i)-2, (j) and (k) shall not be considered as time worked within the meaning of this rule and will not be used for the purpose of calculating punitive overtime paid under this Rule 6(b).

"(p) It is recognized that the Management has the right at any time to rearrange assignments as may be necessary to avoid penalty overtime payments.

"Example 2: Waiter worked on assignment 248 actual hours in month.

"Q. How compensated if ordered to equip or strip dining car three times and is paid under Rule 6(f) twelve (12) pro rata hours, total actual hours 6.

"A. No hours can be absorbed because 248 hours actually worked. The arbitrary of four (4) hours each day or total of twelve (12) for 3 days pays waiter in excess of payment for six (6) actual hours worked at time and one-half. Total payment for month, 205 hours pro rata rate, 8 hours time and one-half and 52 hours pro rata rate under Rules 6(a), 6(b) and 6(f)."

Section (a) provides the number of hours per month (205) for which the basic monthly wage is paid. Section (b) states how employes shall be paid when they work beyond 205 hours in any one month. There is nothing in Rule 6 which restricts the scheduling to a maximum of 205 hours a month. On the contrary, there is every indication that the parties intended to permit the Carrier to schedule more than 205 hours a month. Otherwise, there would be no need for Section (b) which provides for the rate of pay beyond 205 hours. We have so

held in Award 5576 without a referee. There is nothing palpably wrong with that decision which would justify a different finding. On the contrary, we reaffirm our interpretation of this rule.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1963.