

Award No. 12182

Docket No. DC-12211

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYEES UNION
(Local 465)**

**SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 465, on the property of the Spokane, Portland and Seattle Railroad Company, for and on behalf of Ralph H. Boyd, Willie Jenkins, William G. Anthony, and Fred Seamster, that they be paid the difference between their monthly guarantee and the amount they were actually paid for the month of November, 1959, account of Carrier's failure to pay claimants their guaranteed salary in violation of the existing agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimants were, during the month of November, 1959, on regularly assigned positions. Claimants' tour of duty on these positions consisted of a round trip, Spokane, Washington, to Portland, Oregon, and return. Under Schedule Rules 28(a), 35, and 39, hereinafter set out in part, employees who perform service on regularly assigned positions for the entire month are entitled to a monthly guaranteed salary. In addition, the rules further provide that an employee who misses his assignment through no fault of his own, will not as a result, suffer a monetary loss.

On November 16, 1959, claimants reported for their regular assignments. Claimants, however, arrived at Portland, Oregon, too late to make the return trip on another train back to Spokane, Washington, and, as a result, Carrier assigned other employees to the train in question.

Carrier failed and refused to pay claimants a guaranteed salary for the month of November, 1959. Employees, as a consequence, filed time claims on behalf of claimants and appealed from an original denial in due course up to, and including, the highest officer on the property designated by Carrier to consider appeals, which officer, after conferences, also denied the claim (Employees' Exhibits A and B).

POSITION OF EMPLOYEES: There is in existence and on file with this Board an agreement between the parties to this dispute, Rules 28(a), 35, and 39, of which provides, insofar as herein applicable:

notice of intent to refer ex parte to your Board a dispute which has not been handled in the usual manner on the property; and

- (2) after taking this premature action and upon being shown that his letter of January 11, 1960, did not correctly state the actual occurrence on November 16, 1959 upon which his claim was based, the claim was withdrawn on the property.

Respondent submits that your Honorable Board is precluded by Section 3 First (i) of the amended Railway Labor Act from accepting jurisdiction of the dispute asserted in Petitioner's letter of April 7, 1960 (Fourth Division Award 1209).

(Exhibits not reproduced.)

OPINION OF BOARD: The facts which give rise to the controversy sufficiently appear in the respective positions and statements of fact so as not to require repetition here. The issue turns on the factual situation as expressed in the claim. The Claimants there state that they be paid the difference between their monthly guarantee and the amount actually paid during the month of November, 1959. An examination of the record discloses that the Claimants seek to be paid for an assignment missed on November 16, 1959, as the failure to keep the assignment was not their fault. The Carrier denied this fact, and stated the Claimants had been paid on that date. This fact the Claimants did not deny or offer proof to the contrary.

Thus, we are of the opinion that a careful consideration of the record fails to disclose sufficient proof on the part of the Claimants to support their claim.

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

The proof offered does not establish that the Agreement was violated.

AWARD

Claim denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February 1964.