Award No. 12246
Docket No. DC-13152

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, (Local 465)

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Local 465 on the property of the Union Pacific Railroad Company, for and on behalf of Lounge Car Attendant Maurice Holley, that Carrier be required to compensate clamant for the difference between his monthly guarantee and the amount he was paid account of Carrier's failure to pay claimant his monthly guarantee in violation of the existing agreement.

EMPLOYES' STATEMENT OF FACTS: Prior to March 6, 1961, Claimant was regularly assigned as swing waiter to Trains 103-104. Claimant completed his last trip on this assignment on the same date and was advised that the assignment had been abolished. He was due to lay over March 7, 8 and 9, 1961, but was instructed, however, to report for regular assignment on Trains 9-10, March 12, 1961. As a result of the instruction received from Carrier's official, Claimant received an additional two (2) days layover.

Schedule Rule 3(a) of the Agreement between the parties provides:

"**Rule 3. Month's Work.**

(a) Two hundred and five hours, or less, in regular assignments, or two hundred and five hours in broken assignments, will constitute a basic month's work." (Emphasis ours.)

Under the above-quoted rule, Carrier's regularly assigned employes are guaranteed pay for 205 hours a month, even though the employe actually works less than 205 hours a given month. In application of the rule, the employe is only paid for the actual time worked or allowed for the first half of the month. If, however, the number of hours actually worked or allowed the second half of the month, taken with the number of hours worked or allowed the first half, totals less than 205 hours, Carrier is required under Rule 3(a) to nevertheless pay the employe for 205 hours.

The total hours actually worked or allowed claimant for the month of March, 1961, was 185. Carrier paid claimant for 185 hours, 20 hours short of the 205 hour guarantee. Under date of April 20, 1961, Employes' District

new position. On the contrary, as Rule 3(e) limits the guarantee under such circumstances, an employe displaced by abolishment or discontinuance of his position is entitled to pay only for time actually worked.

As indicated, it is the customary practice on the property for this rule to be applied as in this case. Thus, where an assignment is abolished and the employe loses some time in seniority exercise, he is entitled and paid only for the time actually worked.

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned as a swing waiter on Carrier's train "City of Los Angeles." The position, a regular assignment, was abolished effective March 5, 1961, and Claimant completed his last trip, which had begun before the abolishment, on March 6, 1961. He then had a layover, earned in the abolished position, terminating on March 10.

Petitioner asserts that on March 6, Carrier directed Claimant to report for another regular assignment on March 12 — two days after expiration of his earned layover period. Carrier asserts that this was the assignment to which his seniority entitled him; it was offered to him; he accepted it. Neither version affects the issue raised by this case. If Claimant's seniority entitled him to a regular assignment starting after March 6 and before March 11, he could have exercised it. He chose to accept the assignment beginning March 12. As a consequence, there were two days intervening between the termination of the first and the second regular assignment during the month of March.

Claimant's total accumulated hours for the two regular assignments during March was 185 hours, for which he was paid the pro rata rate. The claim is that since Claimant worked only on regular assignments during March, he was entitled, by terms of the Agreement, to a monthly guarantee of 205 hours — 20 hours more than for which he was paid.

The pertinent provision of the Agreement reads:

"Rule 3. Month's Work.

(a) Two hundred and five hours, or less, in regular assignments, or two hundred and five hours in broken assignments, will constitute a basic month's work."

The dispute arises from the employment, in Rule 3(a), of the plural "assignments". Inasmuch as the Agreement is a collective bargaining contract, the plural (assignments) was apparently used loosely to cover all employes under the coverage of the Agreement.

It is significant that Rule 3(a) prescribes that 205 hours, without qualification, constitute a basic month's work in broken assignments as contrasted to 205 hours, **or less**, in regular assignments; and Rule 3(e) provides that "If a position is abolished or discontinued the employe will be paid for the time actually worked or allowed." Rule 3(a), by the use of the phrase "or less," prescribes an allowance for time not worked, up to 205 hours, in regular assignments — it provides no like allowance for broken assignments.

The issue in this case is whether Claimant, for work during the month of March, was contractually entitled to the pay of "regular assignments" or "broken assignments."

Petitioner's argument is that Claimant worked only on regular assignments during March and therefore is entitled to the guaranteed hours of pay prescribed for regular assignments.

It is undisputed that Claimant worked on regular assignments, only, during March; and, there was a two-day break between the first and second of these assignments. We find that these were broken assignments. To find otherwise would be to hold that the parties intended no distinction between the use of the terms "regular assignments" and "broken assignment" as used in Rule 3(a). To such a redundancy, we cannot subscribe.

Petitioner points to the fact that there was only a two-day lapse between the first and second assignment caused by no fault of the Claimant. This is true. But, this Board has no equity powers. The Agreement is that designed by the parties. We may only interpret and apply it. If under the principles of contract interpretation and application either party finds the contract, as written, not to its liking, the remedy is collective bargaining, not the decisional process of this Board.

The argument advanced by Petitioner would, should a covered employe work only on the first and last day of a month on regular assignments, require Carrier to pay him for 205 hours. That such was not the intention of the parties is so apparent that any elucidation would be superfluous.

We find that Petitioner's theory of the case is without merit.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1964.