

Award 18467

Docket 31032

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

With Referee Walter R. Johnson

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Brakeman J. A. Webb, timeslips Nos. 1 and 3 dated January 11, and 13, 1952, claiming 217 passenger miles each, representing miles of assignment, account not used on the dates his assignment was assigned to run."

EMPLOYES' STATEMENT OF FACTS: Brakeman J. A. Webb was assigned to passenger service 1st and 2nd Sub-Division Western Division between Oakland Pier and Oroville a distance of 202 miles. Assigned 6-days a week with layover day Tuesday, at the home terminal Oakland Pier assigned to leave Oakland Pier on No. 2 Sunday, Wednesday and Friday return on No. 1 out of Oroville Monday, Thursday and Saturday. On the dates in dispute the Carrier did not run this assignment, although the railroad was not blocked or tied up between Oakland Pier and Oroville and trains operated over this portion of railroad daily.

POSITION OF EMPLOYES: The Carrier in disallowing this claim tries to take refuge behind the monthly money guarantee; which position has been taken by the Carriers for many years and submitted to NRAB on that basis as early as Award 1704. The Awards on this issue are too numerous to mention but not in one single Award can we find where the Carrier has been sustained in their position. Certainly the monthly guarantee was instituted as the minimum a passenger crew could be paid in a month and has no bearing on the assignment in dispute as the daily earnings are greater than the monthly money guarantee. Under the position the Carrier is trying to sustain, it would be possible to work a passenger crew 10 days then hold them the balance of the month without compensation.

The Assistant to General Manager in disallowing this claim refers to Award 14896 as a sustaining Award. By no stretch of the imagination could this Award be considered as comparable to the claim herein, as Award 14896 was a claim for the second out crew in a pool where the first out crew was used; by the same token they avoid Awards 1704, 6515, 7377, 8757 and 14829.

The Organization sustains their position with the following rules in Schedule of Rates and Regulation for Trainmen.

RULE 2—(A)—(B)

Basic Day Rule 2. (a) One hundred and fifty miles or less (straightaway or turnaround) shall constitute a days' work. Miles in excess of 150 will be paid for at the mileage rates provided.

A pasenger day begins at the time of reporting for duty for the initial trip. Daily rates obtain until the miles made at the mileage rates exceed the daily minimum.

(b) Trainmen are entitled to a minimum of 150 miles for each day on which service is commenced. For example: Crew is assigned "A" to "B" a distance of 104 miles. The first day service is confined to trip one way: second day's service consists of turnaround "B" to "A" and return to "B". On date crew makes straightaway trip "A" to "B" they are entitled to a minimum of 150 miles, and on date they double the road, they are entitled to 208 miles. The same example shall be followed in every case.

The Committee submits for the Board's consideration that the position of the Employes, supported by Agreement provisions and sustained by numerous NRAB Awards justifies an affirmative Award.

All data submitted has been presented to the Carrier by correspondence or in conference.

CARRIER'S STATEMENT OF FACTS: September 9, 1950, Carrier's Trainmaster at Stockton, California, issued Job Circular No. 110 reading in part as follows:

"Bids will be received in the Trainmaster's office, Stockton, until 12:01 P. M., Thursday, September 14, 1950.

ONE BRAKEMAN to passenger service, Budd car tri-weekly between Oakland Pier and Oroville, home terminal Oakland. Ordinarily will aggregate out of Oroville. NEW TURN. Assignment starts handling Budd car westbound leaving Oroville September 18."

September 14, 1950 Trainmaster issued Job Circular No. 116 reading in part as follows:

"In accordance with bids received, the following assignments are made:

J. A. Webb, Brakemen, Budd car,
per my Circular No. 110."

Carrier owns two self-propelled, diesel powered, combination mail, baggage, express and passenger cars which perform local passenger service over its main line tri-weekly between Oakland Pier, California, (Milepost 3.5) and Salt Lake City, Utah, Union Depot (Milepost 928.0) with a train crew consist of one conductor and one brakeman; Webb being the brakeman assigned to the passenger district between Oakland Pier and Oroville, California, (Milepost 205.1).

January 11, 1952, the eastward Budd car (Train No. 2) departed Oakland Pier on time at 7:50 P. M. and arrived at Oroville on time at 12:55 A. M., January 12, 1952 and Webb was tied up at that point at 1:00 A. M., January 12th.

No. 2 (the Budd car) was prevented from moving east of Oroville because of an extremely heavy storm which caused rock and dirt slides to block the main track between Milepost 224 and 231 and between Mileposts 264 and 270. In addition to the slides there were heavy snows and electric power failures in the Feather River Canyon between Oroville and Portola (Milepost 321).

In addition to the storm conditions in the Feather River Canyon, service was interrupted over Webb's assigned passenger district between Oakland Pier and Oroville, thereby in effect isolating the Budd car and Webb at Oroville.

There is in effect a Schedule of Pay and Regulations for Trainmen effective February 1, 1946, a copy of which is on file with your Honorable Board and which in addition to Rules 2(a) and (b) quoted in page 2 of Employes' Submission, contains the following Rules:

"PASSENGER SERVICE

"Rates of Pay Rule 1. Rates of pay for trainmen on trains propelled by steam or other motive power, except as provided in Rule 4(a).

(Rates quoted effective January 1, 1952.)

(a)	Per Mile	Per Day	Per Month
Brakemen	8.22¢	\$12.33	\$379.10

(b) Under the above monthly guarantee rates of pay the Railroad is entitled to:

154 miles per day from regular assigned brakemen;
4612 miles per month; figured at 8.22 cents per mile.

"Guarantee Rule 5. (a) When the monthly earnings of regularly assigned passenger trainmen from daily guarantees, mileage, overtime and other rules do not produce the following average amounts per day, they will be paid for each day service is performed:

	Per Day
Brakemen and Flagmen.....	\$12.63

When extra men fill vacancies in regular positions they take conditions of the regular positions. Service performed by extra men not filling the place of regular men will be paid not less than the daily earning minima for each day service is performed.

(Examples not shown.)

(b) Regular assigned passenger trainmen who are ready for service the entire month and who do not lay off on their own accord, shall receive the monthly guarantee provided in Rules 1 and 4, exclusive of overtime, except that higher monthly guarantee shall be preserved. This rule does not conflict with Rule 5 (a) and examples thereto."

POSITION OF CARRIER: In the handling of this case the Carrier is not, as alleged by the Employes, endeavoring to take refuge behind anything. It is emphatic in its contention that the only guarantees are those contained in Rules 1, 5(a) and 5(b). Rule 1(a) prescribes the rates per mile, per day and per month, and Rule 1(b) sets forth the miles in the various classifications of service to which the Carrier is entitled under the "monthly guarantee" and Rule 5(a) specifically sets forth the minimum amount which may be paid under the monthly earnings guarantee for each day service is performed.

Insofar as daily guarantee is concerned Rule 5(a) leaves no doubt but that it is predicated only on such days as service is performed and it is not to be construed in any other manner.

Insofar as the monthly money guarantee is concerned, Rule 5(a) provides that only regularly assigned passenger trainmen who are ready for service the entire month and who do not lay off of their own accord are entitled to receive the monthly guarantee.

The bulletin assignment of Brakeman Webb does not specify six days a week with layover day Tuesday as contended by the Employees. It merely provides that Webb is entitled to work as Brakeman on the Budd car in tri-weekly service when operated and to the extent the Hours of Service Law will permit him to aggregate out of Oroville. There is nothing contained in the assignment of Webb or the bulletining of the assignment specifying the days of service such as stated by the Employees. Rule 1 specifically provides that an assigned passenger brakeman is entitled to monthly money guarantee of \$379.10 except that under Rule 5(a) if the number of days upon which service is performed divided into the monthly money guarantee do not produce an average daily earning minima of \$12.63 such brakeman is entitled to \$12.63 for each day service is performed.

The only Budd car west of the storm conditions and washouts, slides, etc. in the Feather River Canyon was the car tied up at Oroville and as soon as the storm conditions west of Oroville were cleared up the Budd car was operated from Oroville to Oakland Pier going on duty at Oroville at 4:45 P. M., January 14, 1952.

There was no service performed by Trains 1 & 2 (the Budd car) between Oakland Pier and Oroville during the time the car and Webb were at Oroville because of the storm conditions both east and west of that point and the Carrier reiterates that the monthly money guarantee was applicable.

Carrier is equally firm in its opinion that the Awards cited by the Employees as sustaining their position do not do so.

Awards 1704 and 8757 cited by the Employees involve a rule reading: "The time of assigned conductors will not be discounted for days not used", and Memorandum No. 16-98 covering settlements on Supplements Nos. 15 and 16, General Order 27. Both the above quoted rule and the rule cited in Memorandum No. 16-98 are not contained in this Carrier's schedule. This fact was pointed out to the Employees' representative in 1946 when the Memorandum was cited under Docket 22898, Award 14795, and during progression of the dispute here presented. The above awards are in no way applicable to this dispute.

The Employees also cited Award 6515, Docket 8083, which involved a dispute between this Carrier, the Order of Railway Conductors and Brotherhood of Railroad Trainmen. That award sustained the claim of the employees "because of the showing that freight crews operating between Salt Lake City and Winnemucca on dates cited handled mail and express ordinarily handled by the passenger trains in question." Such facts are not present in this dispute and Award 6515 is not applicable to the dispute here presented.

Award 14829 involves a rule identical with the rule cited above under Awards 1704 and 8757 and in addition settlements cited by the Employees not in evidence in the dispute here presented.

Webb was the only brakeman assigned to regularly perform service on Trains 1 & 2 (the Budd car) between Oakland Pier and Oroville.

He performed that service into Oroville and tied up at 1:00 A. M. January 12th and the next service to be performed on the Budd car was when it departed Oroville which in this instance was on the afternoon of January 14th. In the interim there was no service performed between Oroville and Oakland Pier to which Webb was entitled.

It is the Carrier's contention that Webb was properly and adequately compensated for his service during the month of January, 1952, and is not entitled to any compensation for January 12 and 13, 1952. The date of Jan-

uary 11th as shown in the Employes' Statement of Claim is incorrect inasmuch as Webb was paid 217 miles for the eastward trip on No. 2 from Oakland Pier to Oroville which train departed Oakland Pier at 7:50 P. M. January 11th and arrived at Oroville 12:55 A. M., January 12, 1952. Because of conditions beyond control of the Carrier the Budd car was not operated and Webb performed no service on January 12th or 13th and we state most emphatically that there is no provision in the Schedule which obligates the Carrier to make any payment to Webb for either January 12th or 13th.

All of the above has been presented to the Employes.

EMPLOYES' REPLY TO CARRIER'S ANSWER: The Carrier in answering the employes' submission in the above claim has made a good true clean answer, one which we can find little to take exceptions, however; we do desire to clear up two points.

First; it is the position of the carrier that in passenger service as long as the railroad permits passenger crews to make the minimum set out in Rule 5-(A) their responsibility ends, even though these crews may be held at the away from home terminal.

Second; the carrier has attempted to make it appear that assignment was not intended for a 6 day assignment. Yet they have a published schedule showing the trains to operate out of Oakland Pier Sundays, Wednesdays and Fridays and out Oroville Mondays, Thursdays and Saturdays.

The employes feel they have sustained their position by schedule provisions and past Awards, from your Honorable Board and we urge you render a favorable award.

(Page reference relates to original document.)

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

In its submission the organization relies on Rule 2 of the agreement to sustain the claim of Brakeman Webb account not used on the dates of assignment. There is nothing in said rule which could be interpreted as a guarantee to the holder of an assignment that he will be paid for each day the assignment was bulletined to operate.

The Labor Members in their brief have made reference to Rule 60 in the Trainmen's Agreement (Rule 65 for Conductors) relating to pay in case of delay due to wrecks, washouts, slides or other interruptions. The rule has no application to the claim in this docket which is for mileage "account not used on the dates his assignment was assigned to run". Although this Division has the responsibility to give effect to all rules bearing on the problem it is not in our province to alter the context of the claim. Furthermore, the record does not indicate that this issue was ever presented or considered on the property.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September, 1957.