

Award No. 1057
Docket No. DC-1088

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES
PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of one (1) hour and twenty-five (25) minutes for Waiters Van D. Saylor, R. T. Jenkins, C. L. Hill, and 3rd cook L. C. Britt for being available for duty as required in schedule No. 10—Eastern District for Dining Car Crews at Altoona, Pennsylvania."

EMPLOYEES' STATEMENT OF FACTS: "On April 16, 1939, Train No. 30 was running approximately one hour and forty-five minutes late. On the day in question, the employes herein involved boarded train No. 30 at 5:15 A. M., instead of the usual time of 3:50 A. M. Although available at the crew dormitories for duty at the Scheduled time (3:50 A. M.) the Carrier Agent at Altoona, Pa., started their time at 5:15 A. M."

POSITION OF EMPLOYES: "Under Rule 2-A-2, which provides:

'New positions or vacancies known to be of more than 30 days' duration will be promptly bulletined in the seniority district where they occur, except that temporary positions or vacancies need not be bulletined until the expiration of 30 days from the date they occur.'

"The employes when placing their bids for bulletined runs or positions, do so with the understanding that they shall accumulate no less than the hours shown in crew schedule. Below is found a facsimile of bulletin notice.

<p>'PENNSYLVANIA R. R. CO. Sunnyside Yards, Long Island Bulletin No. Position Waiters—1, 2, 3, 4, 5, 3rd cook, etc.; Swing Schedule No. 10 Eastern District Date Posted.....</p>	<p>DINING CAR DEPT. Line No. Bids Close..... R. G. Robinson, Supt.'</p>
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"Swing Schedule No. 10—Eastern District, to which Bulletin notice refers as follows:

GROUP E-D

Day	Train	Reporting Time	Time Released	Time on Duty
1	5	New York	11:00 P.M.	Pittsburgh 10:35 P.M. 11' 35"
2	DH 79	Pittsburgh	8:40 A.M.	Crestline 12:44 P.M. 4' 04"
3	54	Crestline	4:00 A.M.	New York 5:20 P.M. 13' 20"
4	17	New York	3:30 P.M.	Harrisburg 9:52 P.M. 6' 22"
5	40	Harrisburg	4:45 A.M.	New York 8:20 A.M. 3' 35"
5	*41	New York	1:30 P.M.	Altoona 10:00 P.M. 8' 30"
6	30	Harrisburg	6:19 A.M.	New York 9:50 A.M. 3' 31"
				50' 57"

SUMMARY

"The carrier has shown that:

"(1) The Claimants were paid on April 16, 1939, from the time they were required to report for duty, and so reported, until actually released from duty;

"(2) The payment made was in accordance with Regulations 4-A-1 and 4-C-1 of the agreement between the parties to this dispute;

"(3) There are no provisions in the agreement which provide for the payment now claimed;

"(4) Therefore, the claimants are not entitled to be paid as claimed.

CONCLUSION

"Therefore, the Carrier respectfully submits that the Claimants, C. L. Hill, V. D. Saylor, R. T. Jenkins and L. C. Britt, are not entitled to receive the compensation for which they have made claim under the agreement between the Carrier and the class of employees of which they are members, and respectfully requests your Honorable Board to dismiss the claim of the employees in this matter."

OPINION OF BOARD: It appears that within the calendar month in which the misunderstanding here arose, all the claimants, being regular "swing men," enjoyed not less than two hundred forty hours of employment, and were paid for that period in accordance with rule 4-A-1 of the agreement. It further appears that due to delayed train service on the day in question, and pursuant to special call, claimants Saylor, Jenkins and Britt went on duty at 5:15 A. M. at Altoona, where they were, instead of 6:23 A. M. at Harrisburg, whence customarily they deadheaded from Altoona in a dormitory sleeping car; and that due to the delayed service claimant Hill, ordinarily going on duty at 3:50 A. M. at Altoona, by virtue of the same special call, went on duty that day at 5:15 A. M. As the result of the disarranged schedule, claimants Saylor, Jenkins and Britt had employment for six hours and twenty minutes instead of three hours and twenty-seven minutes usually obtaining; and claimant Hill's time was increased by twenty minutes. All were paid agreeable to the elapsed time of their service. It is urged in behalf of claimants that since they were at the dormitory quarters in Altoona at 3:50 A. M., putting them to work at that point at 5:15 A. M. effected a loss to them of one hour and twenty-five minutes. The premises considered, that contention is not tenable. The call to which claimants responded required them to be ready for duty at 5:15 A. M., not 3:50 A. M. The foregoing observation is particularly applicable to claimants Saylor, Jenkins and Britt by reason of circumstances already recited; but it is not less applicable to claimant Hill, as presently we shall see. By rule 4-C-1 of the agreement it is provided that "time on duty each month will be computed on a continuous basis from time employees are required to report for duty and so report until actually released from duty." That rule, of plain import, as we think, was fully met and observed by the carrier when it called Hill to report for duty at 5:15 A. M., and controlled over the train schedule assignment pursuant to which, if the train involved in the problem had been "on time," he would have gone on duty at 3:50 A. M.

In the light of the agreement between the parties to this controversy, long in effect, we believe the claims here are 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 complaint has not been sustained as to any of the claimants.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1940.