

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Chef working on dining car operating on Train No. 506, Madison to Chicago, be allowed payment for two hours instead of one hour preparatory time at Madison, Wisconsin, beginning in March, 1937, and subsequent dates, based on provisions of Rule 2(d) former agreement, and Rule 10 and 10(d) current dining car stewards' and cooks' agreement."

EMPLOYES' STATEMENT OF FACTS: "Train No. 506 operates Madison, Wis., to Chicago, Ill.; a short while prior to May 24, 1939, Local Chairman received claim from chef working on dining car assigned to train 506, claiming 2 hours instead of one hour preparatory time at Madison prior to departure of train from that point, and on May 24, 1939, Local Chairman submitted claim to dining car superintendent for payment of the two hours' preparatory time. On May 25, 1939, superintendent replied stating that it was agreed to allow only one hour preparatory time to the chef.

"Prior to exchange of the correspondence mentioned, Local Chairman conferred with dining car superintendent, at which time it was agreed that the chef on dining car assigned to train 506 would be paid for the two hours preparatory time at Madison on basis of schedule rule, and that the retro-active payment involved would be taken up with the carrier's general office.

"Nothing, however, developed insofar as payment of the 2 hours as agreed to in conference between superintendent and Local Chairman, resulting in Local Chairman again calling on superintendent July 13, 1939, at which time he was advised that superintendent was not agreeable to paying the two hours preparatory time back to March, 1937; which resulted in the case coming to me on an appeal from Local Chairman.

"Following, I had the matter up with M. E. Pangle, Director of Personnel, C. & N. W. Railway, in letter of August 9, 1939, he replying in letter of August 18, 1939, stating that superintendent of dining cars had reached an understanding with representative of the employees that preparatory time for chef on dining car handled in train 506, Madison to Chicago, would be paid for one hour instead of two hours. Account my not having knowledge of an agreement, as stated by the carrier, reducing the preparatory time from two to one hour, I had acquainted the local committee with Mr. Pangle stating there was an agreement to this effect, and the local committee replied there was no such agreement in existence; resulting in my again having the matter up with Mr. Pangle asking if he had a written agreement covering the matter, to which Mr. Pangle replied in letter of October 21, 1939, reading in part as follows:

"Our file does not contain a written agreement such as referred to in the last paragraph of your letter of Aug. 28, 1939."

"It is the position of the railway company that the claim as submitted to this Board is not supported by provisions of rules and agreements applicable to dining car chef cooks, and, accordingly, claim of the employes cannot properly be sustained."

There is in existence an agreement between the parties bearing effective date of March 1st, 1938.

OPINION OF BOARD: Rule 2(d) of the Agreement of March 1, 1937 called for two hours preparatory time on this run, "except as otherwise agreed to between committee representing cooks and superintendent dining and parlor cars." The two-hour requirement, applying to the chef working on dining car operating on Train No. 506, Madison to Chicago, was duly changed to one hour by such agreement between the designated representatives of the parties, and hence this claim cannot be supported during the life of the 1937 Agreement.

But Rule 10(d) of the Agreement of March 1, 1938, which superseded "all previous rates of pay, agreements, rulings, and interpretations in conflict therewith," likewise called for two hours preparatory time on this run, "except as otherwise agreed to between superintendent dining and parlor cars and general committee." No modification of the two-hour requirement was made at the time or subsequently, and since the requirement was clear and unambiguous and initiative for effecting a change favorable to itself rested with the carrier, it cannot be heard to complain that protest was not made until May 24, 1939, particularly since the Order of Railway Conductors, which took over the Agreement of March 1, 1938, was not designated as the representative of the dining car employes until more than six months after that Agreement had been negotiated. On June 6, 1939 the carrier recognized the impropriety of its practice of allowing only one hour of preparatory time, and abided thereafter by the two-hour requirement contained in the Agreement, but this readjustment for the future cannot deprive the employe of his rights, nor relieve the carrier of its duties, during the period of violation extending from March 1, 1938 to June 6, 1939. To the extent indicated, therefore, the claim must be held to be a valid one.

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 evidence of record discloses a violation of Rule 10(d) of the Agreement of March 1, 1938.

AWARD

Claim sustained to extent indicated in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of June, 1940.