

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

STATEMENT OF CLAIM: "Claim of the System Committee that the carrier violates and continues to violate the agreement (1) when it fails and refuses to provide meals for Lounge Car Porters, namely, L. T. Reynolds, Joseph Nofies, F. D. Calmore and Clarenzo Cook, when away from their home terminal and in service on trains 23 and 12 operating between Denison, Texas and Fort Worth, Texas, and (2) that the carrier shall be required to furnish meals when in the said service as set out herein."

EMPLOYEES' STATEMENT OF FACTS: "On January 30, 1940, the Dining Service Department issued Bulletin H-4, providing in part as follows:

'Train 3

Waiters will relieve lounge car porter at a reasonable time prior to the regular breakfast service. For luncheon, at a time prior to regular luncheon service, not interfering with service to patrons.

We have no objection to lounge car porters at Fort Worth getting lunch from the diner laying over at that point. However, lounge car porters arriving on No. 12 at Denison, their home terminal, will provide themselves with their own dinner and not go to either Train 2 or Train 18's diner for their meals.'

"The above circular was signed Thomas T. Turner, who is the Superintendent of Dining Car Service.

"Lounge Car Porters arriving at Denison on Train No. 12, leave Fort Worth on that train at 3:50 P. M., arriving at Denison at 6:25 P. M., at which point they are relieved.

"The Lounge Car Porters work in a pool composed of Trains 3-23-12 and the pool is known as the 'Muskogee-Fort Worth-Denison' Pool.

"The Lounge Car Porters leave Muskogee, Oklahoma, at 5:20 A. M.; arrive Denison, Texas, 9:05 A. M. on No. 3; leave Denison, Texas, on No. 23 at 9:30 A. M.; arrive at Fort Worth, Texas, at 12:30 P. M.; lay over at Fort Worth, Texas, until 3:50 P. M., and arrive at Denison, Texas, at 6:25 P. M., where they are relieved from service.

"The Lounge Car Porters are given one meal (breakfast) during the period of time from 5:30 A. M. until 6:25 P. M.

"It was not the practice to furnish regular meals on dining cars where the arrival of a train with dining car service was substantially before the time for a regular meal.

"Lounge cars and lounge car porter assignments were not effective on this line until 1932, some five years after the making of the agreement.

"Meals are now furnished to lounge car porters on trains on which they operate when dining car service on such trains is available.

"But the Carrier did not obligate itself to go beyond the 'present practice' i. e., the one in effect on February 1, 1927, and that practice is not required by the agreement to be extended to situations where dining cars with crews on duty are not available in ordinary operations.

"Except as herein expressly admitted, the Carrier denies each and every, all and singular the allegations of the employes submissions and requests that strict proof of each and every, all and singular the allegations of employes' submissions be required.

"For the foregoing reasons the Carrier respectfully requests that the Board deny the claim.

"The Carrier requests ample time and opportunity to except to any and all statements contained in the employes' submission and produce any and all evidence at the Carrier's disposal or otherwise to refute alleged facts and contentions made therein."

OPINION OF BOARD: There is an agreement in effect dated February 1st, 1927 and an Addendum No. 3 covering Lounge Car Porters, dated July 1, 1934, making the 1927 Agreement rules applicable to this latter class. The 1927 Agreement contains rule Article 11:

"The present practice of furnishing meals while on duty and lodging while on duty away from Home Terminal, will be continued."

which provides that all employes will be furnished their meals when on duty. The rule does not say when working on Dining Cars or when on trains where dining cars are operated.

Carrier contends that the rule applies only to dining cars, but does not say that there were any employes who were not receiving all their meals in 1927, and as all the rules were extended to cover Lounge Car Porters, without reservation, they must apply to the same extent as to other employes, and they are therefore entitled to meals during period on duty.

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 Lounge Car Porters are entitled to receive meals under Article 11.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of May, 1941.

Dissent to Award No. 1420 (Docket DC-1469)

We perforce dissent to this Award, specifically to the conclusions in the Opinion of Board reading:

"* * * which provides that all employees will be furnished their meals when on duty."

and:

"The rule does not say when working on Dining Cars or when on trains where dining cars are operated."

and that the Carrier

"* * * does not say that there were any employees who were not receiving all their meals in 1927, * * *"

all of which reads into the rule that which is not there and reads out of the record that which is there.

The express wording of the rule clearly, by the limitation to "present practice," neither includes or excludes any/or all employees and **all situations** of being on duty; and the record clearly discloses that the practice, with inception of the rule, was confined to employees on duty on the cars to which assigned or working and while enroute in trains or away from home terminal and not otherwise or elsewhere. This is the very fundament of the practice in granting free meals to dining car employees.

/s/ C. C. Cook
/s/ R. H. Allison
/s/ A. H. Jones
/s/ C. P. Dugan
/s/ R. F. Ray