

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, 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 Joint Council of Dining Car Employees Local No. 645 that:

(1) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) violated and continues to violate the agreement extant between the respective parties when on May 1, 1942, it transferred the "home terminal" for lounge car porters from Denison, Texas, to San Antonio, Texas, without agreement or understanding with the representatives of the employees; and

(2) The carrier refuses and continues to refuse to re-establish the "home terminal" at Denison, there to remain, until the processes provided for in the agreement are employed to effect such a change; and

(3) The carrier shall now be required by an appropriate award and order to recreate the "home terminal" for lounge car porters at Denison, Texas; and

(4) That each lounge car porter adversely affected by the arbitrary, illegal and unauthorized action of the carrier shall be reimbursed for any and all actual expenses sustained while being compelled to lay over at San Antonio, Texas, retroactive to May 1, 1942.

EMPLOYEES' STATEMENT OF FACTS: For more than twelve years, the "home terminal" for lounge car porters has been established at Denison, Texas.

Effective May 1, 1942, without agreement or understanding with the representatives of the employees, the carrier changed the "home terminal" from Denison, Texas, to San Antonio, Texas.

This will certify that there is a collectively bargained agreement in effect between the respective parties which is on file with this Division of the Board.

POSITION OF EMPLOYEES:

Agreement Rules in Support of Employees' Position

This claim and case is supported by the following rules in the agreement extant between the respective parties dated at Dallas, Texas, April 4, 1942, and effective May 1, 1942.

OPINION OF BOARD: Rule 6 of the applicable agreement provided that the employees would be allowed certain time off duty at "designated home terminals." This agreement was negotiated April 4, 1942, and became effective May 1, 1942. Prior to the negotiation of this contract Denison, Texas, had been for many years the home terminal of the lounge car porters. During the period between the negotiation and the effective date of the agreement the carrier posted new assignments for these employees, effective May 1, 1942, designating San Antonio as the "home terminal."

Petitioners contend that by the use of the word "designated" in the agreement, the home terminal was fixed and could be changed only by negotiation and agreement between the parties. They concede, however, that a change in service requirements which would necessitate a change in the home terminal would not require the consent of the employees to such a change. By this concession the employees must be taken to have abandoned the contention that the use of the words "designated home terminal" resulted in freezing the home terminal, subject only to a change by agreement of the parties.

The carrier contends that by the use of these words the parties to the agreement intended to say "home terminals to be designated by the carrier"; that the home terminal is an incident of the assignment, governed by service requirements and, therefore, a matter on which the employees have no voice and over which this Division of the Board has no jurisdiction.

The carrier seems to concede, however, that it could not arbitrarily switch the home terminal from one point to another.

A consideration of the language used in Rule 6, and of the contentions and concessions of the parties leads to the conclusion that the Rule should be construed as meaning that the carrier should have the right to designate a different home terminal when made necessary by its service requirements.

Was the change here in question made necessary by the carrier's service requirements? To show that it was, the carrier states that "the headquarters of the Dining Car Department was changed from Kansas City to San Antonio, reducing commissaries maintained from two to one and other expenses"; that the number of lounge car porters assigned to the pool was increased from 5 to 6; and that under the new agreement the maximum number of hours to be worked each month was reduced. The record fails to disclose how either of these changes could affect the question of the home terminal of the men. There was apparently no change in the operating schedule of the trains or of the cars in question.

The carrier argues that the new home terminal would be more advantageous for a majority of the employees involved and would result in a saving of some expense to the carrier. If these contentions be true, they apparently did not result from any change in conditions. We do not find in the record any change in operating schedules or other service requirements which could be held to justify a change in the home terminal.

The record discloses the fact that the lounge car service here involved was discontinued on July 1, 1942. This disposes of paragraphs (2) and (3) of the claim.

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 employees involved in this dispute are respectively carrier and employees 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 violated the agreement by changing the home terminal from Denison to San Antonio and should reimburse the lounge car porters affected for actual expenses sustained by reason of the change.

AWARD

Claims (1) and (4) sustained. Claims (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1943.