

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: A. Claim of Dining Car Steward J. E. Johnson for four hours stocking car and deadhead time from departure of Train No. 11, May 22, 1938 from Fort Worth until arrival at Toyah, 9:30 P. M., same date and deadhead time 6:00 A. M. until arrival Train No. 31 at Fort Worth, 6:55 A. M., May 24, 1938, carrier's file T-14681.

B. Claim of Dining Car Steward J. E. Johnson for twenty-five minutes deadhead time, 8:35 P. M. to 9:10 P. M., and a minimum of eight hours each day for service performed on his lay over days, June 11 and 12, 1938, carrier's file T-14682.

C. Claim of Dining Car Steward T. J. Rauber for four hours time for stocking car and seven hours fifteen minutes deadhead time, July 30, 1937, carrier's file T-14194.

EMPLOYEES' STATEMENT OF FACTS: A. On May 22nd claimant regularly assigned was called and required to stock Diner 1011, following which he was deadheaded out on Train No. 11 from Fort Worth to Toyah. The following day or on May 23rd he was placed on duty at Toyah 5:30 A. M. on special passenger train, working through to Texarkana, and was relieved at the latter point 9:30 P. M. same date and deadheaded Texarkana to Fort Worth, his home terminal, on Train No. 31, arriving at the latter point 6:55 A. M., May 24, 1938.

B. Claimant regularly assigned on date in question which was his lay over day was called and required to stock car following which he was deadheaded out of Fort Worth, his home terminal, on Train No. 4, to Longview, June 11, and the following day June 12 performed service on Train No. 15, Longview to Fort Worth.

C. Claimant on date in question was called at Fort Worth, his home terminal, and required to stock Diner 1020, and was later deadheaded out on line, arriving his destination 9:00 P. M. and claimed pay for stocking car and pay for deadheading independently and separately; however, pay was allowed on continuous basis from time required to report for stocking car until final arrival at destination deadheading.

POSITION OF EMPLOYEES: Rule 3 of the agreement between the respondent carrier and the Brotherhood of Railroad Trainmen, governing rates of pay and working of dining car stewards reads:

Insofar as regular stewards performing what you term 'extra service' as mentioned in the next to the last paragraph of your letter is concerned, would refer you to Award 703 of the National Railroad Adjustment Board, Third Division.

Claim declined.

Yours truly,

/s/ W. H. Tobin
Asst. General Manager."

Claim C—as information to the Board am quoting Mr. Tobin's letter December 30, 1938 to former General Chairman Russell denying this claim:

"December 30, 1938.
T-14194

Mr. H. F. Russell,
General Chairman, BRT,
211 Bryan Avenue,
Fort Worth, Texas.

Dear Sir:

Referring to our conference at Dallas December 27th, at which time we discussed the claim of Dining Car Steward T. J. Rauber for 4 hours' time stocking car and 7 hours 15 minutes deadhead time July 30, 1937.

Steward Rauber was called and reported at 12:30 noon, checked out his supplies, and was used continuously until 9:00 P. M. the same date, being allowed continuous time, or 8 hours 30 minutes, in accordance with Rules 2, 3 and 5.

Claim declined.

Yours truly,

/s/ W. H. Tobin
Asst. General Manager."

OPINION OF BOARD: This docket presents two questions. Claims A and B involve continuous time in stocking car and deadheading. The employees claim that the two may not be combined under the rules but must be paid for separately under Rules 3 and 5, respectively.

Rule 3 provides:

"When employees are called and required to report to perform station duty or supply cars at times other than a part of their regular assignment, or where they may be continued in service, they will be paid for the actual time at pro rata hourly rate, with a minimum of four (4) hours' pay for four (4) hours' work or less, and pro rata hourly rate thereafter on the actual minute basis. * * * *"

The Carrier insists that if the employee is to be paid for four hours for doing less than four hours' work, the work must not only be other than a part of his regular assignment, but also he must not be continued in service after the station duty or supplying cars. We can see reasons why the parties might have written the rule in such a manner as to have reached the result contended for by the Carrier. They might have provided this penalty only for station work or supplying cars when the work necessitated a special trip to and from the station for this particular work. In their negotiations on this Agreement the Carrier might very reasonably have contended that this four hour minimum should not apply when the work only meant reporting to work early for their assignment or being continued at work after their assignment.

If Rule 3 could be read as contended for by the Carrier, we would agree that "Deadheading" immediately following such work should be considered as continued service, because Rule 5 expressly provides that "Deadhead" hours will be counted as "Service" hours. In combining station duty and deadheading you are not combining two penalties. The Deadheading Rule amounts to a concession to the employees; a concession to count and pay for "deadhead" hours the same as service hours.

As Rule 3 is written, however, we cannot agree with the contention of the Carrier as to its meaning: i. e., that it provides two exceptions to the rule for four hour minimum payment for station work. If the parties had intended the result contended for by the Carrier, the comma should not have been inserted after "assignment" in the first clause of the rule. As the first sentence of the rule is written and punctuated, we must conclude that it was the intention to require the four hour minimum payment for station duty or supplying cars in all cases at times other than a part of their regular assignment. It is admitted that the work here involved was not a part of the employees' regular assignment.

Claim B of this docket presents the same question as presented by Docket DC-2195 and for the reasons assigned in Award No. 2259, is sustained.

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 as alleged.

AWARD

The Claim, A, B and C, is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.