

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

BOSTON & ALBANY RAILROAD COMPANY

(New York Central System, Lessee)

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 370, Hotel and Restaurant Employes International Alliance, on the property of the Boston and Albany Railroad Company, for and in behalf of Mr. Charles Fuller, who is employed in the Dining Car Department of the Boston & Albany Railroad Company, for \$15.00 as a result of robbery while asleep in crew dormitory at Albany, N. Y. due to the Management's failure to provide for his safety and well being as provided under Rule 8 of the current Agreement.

EMPLOYES' STATEMENT OF FACTS: On Monday, November 15, 1943, Mr. Charles Fuller arrived at Albany off train No. 11, dining car No. 633, in the normal course of his tour of duty. In line with the Carrier's instructions he reported to the crew dormitories and was assigned to room No. 7, bed No. 2.

Upon retiring, Mr. Fuller adjusted his trousers under his pillow. In one trouser pocket he had \$15.00.

About 4:00 A. M. he was awakened by someone snatching his trousers from under the pillow. In the darkness of the room he was unable to identify the intruder. Mr. Fuller jumped out of the bed and ran to the hallway, but there was no one in sight. He then attempted to locate the attendant, and being unable to find him, telephoned the commissary and asked the agent on duty to send a policeman to the dormitory.

Upon the arrival of the policeman, a search was made of the premises. In room 8 a pair of trousers was found on the floor. The owner of these trousers claimed that his wallet and \$2.00 were missing. In room 12 Mr. Fuller's trousers were found on bed 12. The \$15.00 in bills and silver were missing.

The representatives directed the attention of the Management to this situation, citing Rule 8 of the current Agreement. Rule 8 provides:

"Rule 8 (b) Sleeping Quarters

The Company shall provide quarters for employes on runs where lay-overs are necessary. This provision is intended to be applicable at any lay-over point where employes are relieved from duty and conditions are such that they require sleep during lay-over period."

This is simply a case in which the employees are reading something into a rule of the contract, as an interpretation thereof, which is not there in actual language or in implied meaning. Neither Rule 8 nor any other provision of the agreement was intended to insure dining car employees against thefts or losses while on duty or off duty.

OPINION OF BOARD: Pursuant to the requirements of Rule 8-b of the effective Agreement of January 1, 1942, the carrier maintained at its Albany, New York passenger station, sleeping quarters for its employees relieved from duty at that point who required sleep during their lay-over periods. The claimant, a dining car waiter entitled to the use of said dormitory, spent the night of November 15, 1943 there, during which he was robbed of \$15.00 by some unknown person. The claim is for reimbursement, upon the theory that the carrier was negligent in failing to provide a safe place for the claimant's accommodation.

An action for negligence is a legal remedy for the violation of the duty to use due care. While such a duty may arise out of a contractual relationship, the action is for the tort and not for the breach. The National Railroad Adjustment Board is an administrative agency, the powers of which are derived from The Railway Labor Act. It is not a court, and it has no jurisdiction of actions for negligence. "The function of this Board is limited to interpreting and applying the Rules agreed upon by the parties." Award 1589. It follows that we have no jurisdiction of this 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 does not have jurisdiction of the subject-matter of the dispute involved herein.

AWARD

Claim dismissed for want of jurisdiction of the subject-matter.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1944.