Award No. 2704
Docket No. DC-2740

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 of the Joint Council of Dining Car Employes (Local No. 645) that:

(1) That carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) violated and continues to violate its agreement with the organization when on and after December 14, 1942, it failed and refused to make proper payment to William Hadley, et. al., for "on duty time" after 9:00 P. M. and before arrival of Train No. 3 at San Antonio, Texas, and after 9:00 P. M. and before the arrival of Train No. 26 at Kansas City, Missouri; and,

(2) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) refused and continues to refuse to make the proper wage payments as authorized by the agreement rules; and,

(3) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) shall now be required by an appropriate award and order of the Board to pay for all "on duty time" after 9:00 P. M. on each and every day since December 14, 1942, under the circumstances set out in the Statement of Facts and as specifically concerns Trains 3 and 26; and,

(4) The carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) has refused and continues to refuse to make effective Rule 7. The current agreement shall now be ordered to apply Rule 7 in its entirety henceforward; and,

(5) The following employes who are involved in this dispute, and any and all others who are involved, either directly or indirectly, shall be reimbursed for any and all money losses suffered by them as the result of the carrier's refusal to properly apply the agreement rules:

William Hadley	Charlie Price
Willie Smith	Calvin May
William Christain	Curtis Thompson
Earl Anderson	F. D. Calmore

George Barrett	James Neal
Thomas Summerville	Joseph Carroll
Reeder Mosley	Earl Brisco
George Thibodeaux	Taylor Sewell
Charles H. Wilson	Leon Webb
George Dilworth	Shirley Penson
Arron Handy	Truitt Newton
W. H. Killough	Alexander Pierce
Robert Batts	Joe Acklin
Pruit Harvey	David S. Shakespare
William Ray	Walter Price
Quilla Darden	Willie Phillips

EMPLOYES' STATEMENT OF FACTS: The daily scheduled arriving time of Train No. 3 at San Antonio, Texas, is 11:45 P. M.

The daily scheduled arriving time of Train No. 26 at Kansas City, Missouri, is 10:45 P. M.

The Dining Car Waiters, Chefs and Cooks are "relieved" of their duties at 9:00 P. M. while en route to San Antonio and Kansas City respectively according to the contention of the carrier, which is denied by the employes. Kansas City, Missouri, and San Antonio, Texas, are layover points for the crews.

The employes are not permitted to abandon the car at 9:00 P. M., but are required to proceed to Kansas City or San Antonio as the case may be so as to be available for service early the following morning or trip.

There is, in fact, no physical release of the employes at 9:00 P. M.

The employes are not required to show their passes or other forms of transportation to be permitted to ride the train after 9:00 P. M. and until arrival at the layover points, i. e., Kansas City or San Antonio.

The employes are "on duty" until their actual and physical release occurs when the train arrives at the designated layover points.

The crew does not sleep on the car at Kansas City or San Antonio.

This claim flows from the "schedule assignment" published by the carrier on December 6, 1942. The protest and notice of claim to the carrier of this violation was made on December 14, 1942.

POSITION OF EMPLOYES:

Authorities in Support of Employes' Contention.

This will certify that there is an agreement extant between the organization and the carrier dated at Dallas, Texas, on the 4th day of April, 1942, copy of which is on file with this Division of the Board.

In that agreement appears the following rules:

"HOURS OF SERVICE

RULE 2 (a) Two hundred forty (240) hours or less in regular assignment will constitute a month's work for regular employes ready for service the entire month and who lose no time on their own account. Employes temporarily detached from regular assignment at company's request shall not suffer loss of pay. Employes will be advised of their hours of service in regular assignment.

(b) Employes will be paid overtime on actual minute basis for all time on duty in regular assignment in excess of 240 hours at pro rata rate, except that actual continuous time, not required for service on any trip, at any layover, turnaround, set-out or terminal point shall be deducted from the continuity of time in all cases where the interval of release from service exceeds one hour; plus not to exceed three periods daily of fifteen (15) minutes each for meals. Employes

Except as herein expressly admitted by the Carrier, the Carrier denies the allegations of the employes and respectfully requests that the Petitioner be placed on strict proof of the allegations.

The Carrier submits that the agreement does not support claim and that it should be denied.

OPINION OF BOARD: Train No. 3 was scheduled to arrive at San Antonio, Texas, at 11:45 P. M., and Train No. 26 was scheduled to arrive at Kansas City, Missouri, at 10:45 P. M. Claimants' scheduled assignments provided that the service of dining car employes on these two trains would terminate at 9:00 P. M. Claimants contend that they are entitled to be paid until their arrival at San Antonio and Kansas City, respectively, on the theory that they were not released from service until they reached those points. Both places were layover points for the claimants working these trains.

The claim involves the interpretation to be given to Rule 2 of the current Agreement. The pertinent part of Rule 2 (b) provides:

> "Employes will be paid overtime on actual minute basis for all time on duty in regular assignment in excess of 240 hours at pro rata rate, except that actual continuous time, not required for service **on any trip**, at any layover, turnaround, set-out or terminal point shall be deducted from the continuity of time in all cases where the interval of release from service exceeds one hour; plus not to exceed three periods daily of fifteen (15) minutes each for meals." (Emphasis supplied.)

Rule 2 (c) provides:

> "Time will be counted as continuous **on each trip** from the time required to report for duty until released from duty, subject to exceptions mentioned in paragraph (b) of this rule." (Emphasis supplied.)

It is not disputed that regular assignments were made pursuant to Rule 2 (a) and that such assignments terminated at 9:00 P. M.

The time between the termination of the assignments and the arrival of the trains at employes' layover points do not fall within any of the exceptions stated in Rule 2 (b). In other words, it is not deductible from the time "required for service **on any trip.**" (Emphasis supplied.) We think that the requirement that the "hours of service in regular assignment" shall be fixed is limited by the requirements of Rule 2 (b). In other words, employes are entitled to be paid for time used in making a trip, less authorized deductions, and that regular assignments must be made with this in mind. Unless this be so, it seems to us that employes would fall squarely within the deadheading rule and the Carrier becomes liable thereunder. Construing the pertinent parts of Rules 2 (a), 2 (b) and 2 (c) together, as well as the deadheading rule, we are of the opinion that assignments of hours of service thereunder must be terminated at or after the completion of the trip. The language of Rule 2 (c), that "Time will be counted as continuous **on each trip** from the time required to report for duty until released from duty, * * *" of itself infers a release from duty at the termination of the trip. (Emphasis supplied.) We think the position assumed by the Organization is correct.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1944.