

Award Number 3099

Docket Number DC-3206

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Chefs Walter Olson, C. H. Taylor and Wm. Nelson and other chefs and cooks for an allowance of four hours on July 25, 1944, and subsequent dates based on Rule 7 of the Chefs' and Cooks' Agreement effective November 1, 1940.

JOINT STATEMENT OF FACTS: Passenger Train No. 6 is operated from Seattle to Pasco to Spokane, leaving Seattle at 6:10 P.M.; Passenger Train No. 5 is operated from Spokane to Seattle, leaving Spokane at 7:00 A.M. Passenger Train No. 4 is operated from Seattle to Pasco to Spokane to St. Paul, leaving Seattle at 8:00 A.M.

From prior to July 25, 1944, to March 11, 1945, a cafe coach was handled on Train No. 6 from Seattle to Pasco. Upon arrival at Pasco this cafe coach was cut out and added to Train No. 4 and handled on this train to Spokane. On arrival at Spokane this cafe coach was cut out and handled to Seattle on Train No. 5. Effective March 11, 1945, the cafe coach was handled from Seattle to Spokane on Train No. 6 and from Spokane to Seattle on Train No. 5.

On July 25, 1944, and various subsequent dates, due to the necessity for a cafe coach on Train No. 4 out of Seattle, the cafe coach assigned to Train No. 6 out of Seattle was not handled on that train, but was handled on Train No. 4 on the following day from Seattle to Spokane.

The cafe coach assigned to Train No. 6 out of Seattle was manned by a Cafe Coach Cook. In accordance with the established practice, the cook reported at the Commissary at 3:00 P.M. to stock the cafe coach preparatory for the trip leaving Seattle on Train No. 6 at 6:10 P.M. On certain dates that the cafe coach was not operated out of Seattle on Train No. 6 but was operated out of Seattle on Train No. 4 on the following day, the Cafe Coach Cook was not notified of this change in operation until after arrival at the Commissary to stock. On such dates the Cafe Coach Cook was notified after arrival at the Commissary to stock the cafe coach that he would be held from his regular run on Train No. 6 to perform service on Train No. 4 on the following day.

Walter Olson, C. H. Taylor and Wm. Nelson were assigned as Cafe Coach Cooks on Train No. 6 from Seattle to Pasco; on Train No. 4 from Pasco to Spokane and on Train No. 5 from Spokane to Seattle. On the dates these employees as well as other employees assigned as Cafe Coach Cooks on Train No. 6 out of Seattle were not notified until after arrival at the Commissary to

OPINION OF BOARD: Claimants were regularly assigned to work in a cafe coach which, on the days the claims arose, was scheduled to leave Seattle for Spokane at 6:10 p.m. They were called for 3:00 p.m. for the purpose of stocking the cafe coach before the commencement of the road trip. After reporting they were notified that they were being withheld from this road trip on Train Number 6, leaving Seattle at 6:10 p.m. and would be sent out on Train Number 4 the next morning at 8:00 a.m. Claimants were paid for three hours for stocking the car as provided in Rule 6 of the current Agreement. They claim an additional four hours for reporting and not being used in road service under Rule 7. The Carrier contends that the controversy comes within Rule 8 which would require a denial of the claims.

The pertinent portions of the applicable rules of the controlling Agreement are:

"Rule 6. Employees required to perform service in stocking, conditioning or transferring equipment of cars will, when such service is not continuous with road service, be allowed time on a minute basis with a minimum of three (3) hours . . ."

"Rule 7. Employees called and reporting or reporting without being called for road service which for any reason is not run will be allowed not less than four (4) hours pay. If any service other than stocking car called for, or reporting for, is actually performed, or if held in excess of four hours, employees shall be allowed not less than eight (8) hours pay . . ."

"Rule 8 (a). When a regularly assigned employe is required to perform extra or special service his pay until his return to his regular run shall not be less than it would have been had he continued to perform service on his regular run."

It is not disputed that Claimants were entitled to three hours pay for stocking the cafe car and the Carrier has paid for this time. We think Claimants are entitled to four hours additional pay for reporting and not being used in road service under Rule 7. The fact that Claimants stocked the cafe car and received pay for so doing does not affect the claim one way or the other. The Carrier is in no worse position than if it had ordered the car stocked the next morning before it went out on Train Number 4. The compensation for stocking was for work actually performed and paid for in accordance with the Agreement. It cannot be used to mitigate the penalty pay arising under another rule in the Agreement. Consequently, Claimants are entitled to four hours for reporting and not being used in road service just as if no stocking had been done at that time. Of course, if Claimants had performed any service other than stocking the coach, pay for which is specially provided for in Rule 6, or if they had been held in excess of four hours, they would have been entitled to eight hours pay under Rule 7. But neither of these conditions having occurred and compensation for stocking the cafe coach having been paid in accordance with Rule 6, Claimants are entitled to an additional four hours under this rule.

The Carrier contends that as the earned pay for going out on Train Number 4 exceeded the earnings of the regular assignment on Train Number 6, there is nothing due by virtue of Rule 8 (a). With this, we cannot agree. This rule guarantees a maximum compensation for work actually performed and in no manner has the effect of waiving penalties or contractual violations. The fact that Claimants were called for road service on Train No. 6 and not used, requiring the penalty payment set out in Rule 7, in no way affects the compensation they are to receive under the Agreement for services performed for going out the next day on Train Number 4. Rules 7 and 8 are unrelated in their applications and compliance with one does not establish compliance with the other.

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 Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 29th day of January, 1946.