Award No. 3197

Docket No. DC-3185

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: That Frank Frankaul and other employes similarly situated shall from April 15, 1944, be paid the difference between what they earned and what they should have earned because of the Company's failure to correctly apply Rule 4 (e) of the existing Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement dated January 1, 1944, (copies of which are on file with your Board) which contains the following rule:

"Minimum Day

4(a) Except as otherwise provided in these rules, employes will receive not less than eight hours' compensation for each day service is performed."

The exceptions referred to in the above quoted rule are those arbitraries established for "Calls", Station Duty, Stocking and stripping cars.

Under date of March 22, 1944, the Carrier issued a supplement to Bulletin No. 2 showing the following time allowances for regularly assigned employes on Trains 27 and 28: First day, leaving Chicago, three hours and forty-five minutes for waiters; fourth day arriving at Oakland Pier, three hours and fifty minutes. First day leaving Oakland Pier, seven hours; fourth day arriving Chicago, three hours and thirty minutes.

Protest of this schedule was made to management by Mr. J. L. Pickett, System Chairman on March 29, 1944, as follows:

Mr. C. H. Shircliffe — March 29, 1944
Superintendent Dining Car Service
Chicago North Western Railway
168 North Canal Street
Chicago, Illinois

Dear Sir: **Protest**

"We herewith respectfully protest Bulletin #2, Supplement #5, effective March 22, 1944; which shows the following time allowances on Trains 27 and 28: First day leaving Chicago, three hours and forty-five minutes for waiters, fourth day arriving at Oakland Pier, three hours and fifty minutes. First day leaving Oakland Pier, seven hours; fourth day arriving at Chicago, three hours and thirty minutes.

"Kindly refer to Rule 4(a) in the existing agreement between Dining Car Employes Union, Local 351 and the Chicago, North Western Railway Company which reads as follows:

indicated above are based on their contention that computation of allowances under provisions of rule 4 (a) must be on a calendar day and not on a trip day basis.

The employes' claim also involves basis of compensation for waiters on a number of other assignments where waiters perform less than eight hours service on the calendar days they depart from their initial terminal on continuous trips carrying over into following days and where waiters perform less than eight hours service on the calendar days they arrive at the final terminal on continuous trips upon which they took up work on previous days.

POSITION OF CARRIER: When the railway company agreed to the inclusion of rule 4 (a), quoted above, in waiters' schedule effective January 1, 1944, it did so for the purpose of giving the waiter class a minimum basic day rule similar to that included in train service employes' schedules that is to provide for a minimum allowance of eight hours for each trip. The provisions of rule 4 (a) since its inception has been understood to apply to a trip day and not to a calendar day. There is nothing in the schedule effective January 1, 1944, nor in any previous waiters' schedule providing for compensation in favor of waiters on regular assignments on a calendar day in lieu of trip day basis. To the contrary, the rules indicate that the basis of computing time is on a trip day and not a calendar day. In this connection attention is directed to rule 5, waiters' schedule, quoted in the Carrier's Statements of Facts, which specifically provides that time allowances will be computed on a continuous time basis from time employes are required to report for duty until released from duty, except that actual time not required for service at layover, turnaround, setout, or terminal point or where rest periods are provided en route at night between the hours of 10:00 p.m. and 6:00 a.m. will be deducted from the continuity of time in all cases where the interval of release from service exceeds two hours.

It is the position of the railway company that waiters in its service are now being properly compensated in line with the intended application of schedule rules involved.

It is the further position of the railway company that the claim of the employes is not supported by any schedule rules or agreements applicable to that class of employes and therefore cannot consistently be sustained.

OPINION OF BOARD: Claimant was assigned as a Waiter on a Dining Car operated in Train 27, Chicago, Illinois to Oakland, California, and Train 28, Oakland, California to Chicago, Illinois. On the day Train 27 leaves Chicago, Claimant is assigned 7:15 to 11:00 p.m. On the second and third days out of Chicago he is assigned 5:00 a.m. to 10:00 p.m. On the fourth day out of Chicago he is assigned 5:00 a.m. to 8:50 a.m. On the return trip on Train 28 a somewhat similar assignment of hours is made. As a correct determination of the proper compensation under the rules for a one-way trip will serve to decide the case, we will not go into the return assignments in detail. It is the contention of the Organization that the rules guarantee eight hours work on each calendar day and that Claimant is entitled to such minimum of eight hours on the first and fourth days by virtue of Rule 4 (a) of the applicable Agreement, which states:

> "Minimum Day. Except as otherwise provided in these rules, employes will receive not less than eight hours' compensation for each day service is performed."

We think the foregoing rule contemplates a minimum guarantee of eight hours work in any twenty-four hour period commencing at the beginning of his assignment. But it will be observed that Rule 4 (a) applies only when other applicable provisions are not provided as is evidenced by the words "except as otherwise provided" contained in the rule.

The Carrier contends that the first paragraph of Rule 5 provides an exception. It says:

"Time allowances will be computed on a continuous time basis from time employes are required to report for duty until released from duty, except that actual continuous time not required for service at layover, turnaround, setout or terminal point, or where rest periods are provided enroute at night between hours of 10:00 p.m. and 6:00 a.m. will be deducted from the continuity of time in all cases where the interval of release from service exceeds two hours. Assignments will include necessary time for employes to clean up cars when required to do so."

It seems to us, therefore, that Rule 5 provides a method of calculating the time on which Claimants will be compensated, to-wit: continuous time from the time Claimants were called in Chicago at 7:15 p.m. until released at Oakland at 8:50 a.m., less any rest periods in excess of two hours allowed between the hours of 10:00 p.m. and 6:00 a.m. of each. Under the facts of this case, it seems to us that this rule supersedes Rule 4 (a).

We can readily understand the necessity for a minimum eight hour day to cover short trips by employes such as these claimants. We can see also the reason for a continuous service rule to cover long trips which might commence or end at any hour of the calendar day. For instance in the present case, Claimants were called at 7:15 p.m. and were off duty at 11:00 p.m. on the first calendar day. But on the second and third days when their whole time was spent on the train, they got continuous pay less rest periods of two hours or more which are provided between the hours of 10:00 p.m. and 6:00 a.m. In the instant case, Claimants are paid for 17 hours service on the second and third days. Reason not only exists for an exception to Rule 4 (a) where long trips are involved but we think it is clear that Rule 5 provides that exception and is controlling under such circumstances just as Rule 4 (a) provides that it shall be. We find no basis for an affirmative award.

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 there was no violation of the current Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1946.