

Award No. 3673

Docket No. DC-3660

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

JOINT COUNCIL DINING CAR EMPLOYES

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes (Local 495) on the property of the Seaboard Air Line Railway Company, that the Carrier has violated and continues to violate the current agreement, particularly Rule 2, Paragraph K thereof, by refusing to post "schedule of runs and assignments" for regularly assigned employes, and that the Carrier shall now be order by your Board to comply with the agreement.

EMPLOYEES' STATEMENT OF FACTS: The claim in the instant case involves only an interpretation of the stated rule and does not involve any claims for compensation for any employee who may have been injured as a result of any wrongful application thereof.

There is in evidence an agreement dated October 30, 1943, which provides in Rule 2 (K) as follows:

Assignments. (K) Schedule of dining car runs and assignments for regularly employes will be posted in accessible places in the Washington, Jacksonville and Miami Commissaries. The schedule shall show the reporting time and release time, which shall include necessary time for stocking and preparation and for cleaning up at the end of each run.

Differences has arisen over the intent of this rule and conferences between Carrier and claimant have failed to resolve these differences.

POSITION OF EMPLOYES: Petitioner contends that the rule, in controversy, requires the Carrier to show on the posted schedule the following information as well as reporting and release times:

- 1—tour of duty
- 2—names of crew members—
- 3—total hours accumulated by:
 - a—day
 - b—trip
 - c—month
- 4—home terminal

Petitioners' reasons for this interpretation of the disputed rule is based upon the following provisions of the agreement, which must be read in connection with the requirements of Rule 2 (K).

- 1—Rule 5—Providing

Filling assignments (g). New positions or permanent vacancies will be bulletined between the first and tenth of each month in

cided as to which rule they should rely upon in support of their contention. It very definitely appears, from the way the organization has "floundered around" in trying to find a rule to support their contention, that they realize, in their own minds, that there isn't such a rule, however, they hope, in some manner, to gain a favorable decision.

As previously stated, this dispute is confined to the requirements of Rule 2-(k) because we have specifically been accused of having violated this particular rule and this rule alone as far as the dispute that is before the Board is concerned.

The representative of the organization advised us that for a period of time we did post the names of the individuals assigned to each dining car. This is a misstatement of facts, as we have no record whatsoever of this having been done, and, likewise, the employees who are charged with the duty of posting the dining car schedules state that this was never done. From time to time the general chairman of the organization was furnished with a copy of the names of the employees on each assignment. Even if we had posted the names of the individuals for a period of time the practice would not have been controlling in the instant case because the particular rule involved in this dispute is not ambiguous, and since its requirements are clear and concise then the rule itself must be controlling.

Our position briefly stated is that Rule 2-(k) of the Dining Car Employees' Agreement does not provide that we post the names of the individual employees assigned to the various runs and that we have always complied with the rule by posting at the prescribed places the schedule of runs and assignments showing thereon the reporting and release time including necessary time for stocking and preparation and for cleaning up at the end of each run.

For the above reasons we respectfully request that the claim be denied.

OPINION OF BOARD: There are two principal questions before us.

(1) Has the Carrier complied with Rule 2-(k) in posting dining car assignments by train name and number rather than by crew?

(2) Was the organization estopped by the Rule 9 (e) from bringing this matter before the Board?

(1) We hold that the Carrier failed to comply with the agreement in refusing to post assignments by crew. Rule 2-(k) places two requirements on the Carrier. First, it must post a schedule of dining car runs, with specified information as to their nature. Second, it must post "assignments for regularly assigned employees." To any individual seeking light either on his own assignment or the assignments of others, the crew (i.e., the exact trip) he or others were to man would be essential information. Posting assignments, therefore, implies posting them by crew.

The Carrier relies on Award 3448 to the contrary. In that case, however, the organization did not ask that assignments be posted by crew; it asked only that the Carrier there involved do what the Carrier here involved has been doing, i.e., posting assignments by trains or couplets of trains. Award 3448, having been based on a substantially different claim, is therefore of no substantial weight here.

(2) Rule 9 (c) provides that "no claim for time or grievance matters will be considered under this agreement unless submitted to proper officer in writing within thirty (30) days from date of occurrence." The agreement was dated December 1, 1943, while this matter was first brought to the Carrier's attention, apparently verbally, a few days before the first formal protest was made January 29, 1946. There is evidence in the record that this delay was discussed by the organization and the Carrier between the filing of the grievance and the appeal to this Board. At no time, however, did the Carrier refuse to discuss the dispute on its merits and nowhere in its submissions to this Board did the Carrier challenge the right of the organization to pursue the matter. Rule 9 (c) was brought to this Board's attention in the Carrier's behalf by a member of the Board.

We do not challenge the Board member's right to do this, nor the relevancy of his contention. We do feel, however, that the Carrier's failure to bring in Rule 9 (c) gives weight to the position of another Board member, speaking in the organization's behalf, that Rule 9 (c) is not applicable in the instant case. Rule 9 (c) covers claims "for time" or "grievance matters." Evidently the parties consider these matters to consist of time and pay questions, etc. No time or pay question, or question related to time or pay is involved here. Hence we believe Rule 9 (c) does not foreclose our finding and 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 parties waived oral hearings thereon;

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

The Carrier violated Rule 2-(k) of the agreement, as indicated in the Opinion.

AWARD

Claim sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 9th day of October, 1947.

DISSENT TO AWARD 3673, DOCKET DC-3660

This award attempts to distinguish the claim in this case from that in Award 3448, stating "Award 3448, having been based on a substantially different claim, is therefore of no substantial weight here." The employees relied on Award 3448, and the Carrier claimed that award supported its action here involved. The record contains the following statement by the employees:

"The dispute now before this Board is identical to a dispute recently settled as a result of Award 3448 of this division.

The rule in dispute, at that time, contained the same language as the rule now in dispute, also the employees' and the carrier's contention is as same as that taken by the parties involved in Case DC-3447, Award 3448.

* * * *

We, therefore, request your Board to award for the employees in line with Award 3448. Copy of award attached hereto."

Thus we find this Opinion is refuted by the submission of both the employees and the Carrier.

/s/ C. P. Dugan
/s/ R. F. Ray
/s/ A. H. Jones
/s/ R. H. Allison
/s/ C. C. Cook