

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL OF DINING CAR EMPLOYES

THE PENNSYLVANIA RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employees, Local 370 for and in behalf of Crew No. 12, consisting of the following personnel:

Cooks	Waiters
C. A. Young, 2nd Cook	C. H. Ivory
B. J. Evans, 3rd Cook	L. C. Livingston
J. L. Benjamin, 4th Cook	Benjamin McMichael
	H. P. Hopply

that they be properly compensated for extra duty performed on July 28, 1946, when said crew received instructions to continue in service on Train No. 79—Fort Wayne, to Chicago, and deadhead Train No. 54, Chicago to Fort Wayne:

and that Carrier has violated, and continues to violate Rule 4—(4-D-1) of the current agreement when it refuses to compensate claimants in accordance therewith.

**EMPLOYES' STATEMENT OF FACTS:** Effective January 1, 1945, the parties hereto entered into an agreement which contained the following rule—

Rule No. 4—Time Allowances

4-D-1. Employees notified or called to perform extra duty, stock or strip cars or similar work on other than their regular assignment (unless otherwise notified before leaving home), will be allowed a minimum of four (4) hours for four (4) hours' work or less, time worked in excess of four (4) hours will be computed on the actual minute basis. Payment under this Rule 4-D-1 shall not be credited to the basic month's work.

The Claimants herein involved were all regularly assigned employees within the meaning of Rule 4—(4-D-1) and were assigned to Group WB, Crew Swing Schedule No. 27, effective May 26, 1946, which shows the following tour of duty.

		Report		Released		On Duty Hours	
Day	Train	Point	Time	Point	Time		
1	42	Chicago	3:15 PM-CT	Crestline	11:37 PM-ET	7'	15"
2	44/72	Crestline	4:55 AM-ET	New York	6:30 PM-ET	13'	35"
3	69	New York	1:30 PM-ET	Altoona	10:51 PM-ET	9'	02"
4	79	Altoona	5:07 AM-ET	Ft. Wayne	2:03 PM-CT	8'	56"
5	5	Ft. Wayne	3:40 AM-CT	Chicago	6:50 PM-CT	3'	10"

**OPINION OF BOARD:** Claimants herein are claiming pay under Rule 4-D-1 of the current Agreement for deadheading from Chicago to Fort Wayne, Indiana, on July 28, 1946.

Claimants' regular tour of duty called for their being released at Fort Wayne, Indiana, at 2:03 P. M., on the day in question and leaving Fort Wayne at 3:40 A. M., the next day on train 5 for Chicago. On the day in question they had not completed serving luncheon at the time they arrived in Fort Wayne and were required to continue on train 79 to Chicago where they were released at 3:40 P. M. They were then required to deadhead from Chicago to Fort Wayne on train 54, which left Chicago at 10:00 P. M. and arrived at Fort Wayne at 12:25 A. M. The deadheading back to Fort Wayne was necessary in order for them to complete their regular tour of duty from Fort Wayne to Chicago on train 5.

Rule 4-D-1 of the agreement, effective January 1, 1945, is as follows:

"Employees notified or called to perform extra duty, stock or strip cars or similar work on other than their regular assignment (unless otherwise notified before leaving home), will be allowed a minimum of four (4) hours for four (4) hours' work or less; time in excess of four (4) hours will be computed on the actual minute basis."

In their submission Employees explained that they were making no claim for continuing on train 79 from Fort Wayne to Chicago "as this extra duty was on and continuous with the regularly assigned tour of duty" and that the parties are in accord that payment for the actual time as part of their basic month "was proper payment as contemplated by the rules".

The Employees are claiming four hours extra pay in addition to the basic 240 hour month for each claimant for deadheading from Chicago to Fort Wayne as "extra duty" under Rule 4-D-1.

Most of the reasons assigned for our ruling in Award No. 3728 this day rendered by this Division are equally valid in this case.

Here again we find proposed rule changes by the Employees which indicated that they were not then interpreting the words "extra duty" according to their present contention. As late as April 15, 1944, they proposed a change to make Rule 4-D-1 read "Regularly assigned employees notified or called to perform extra duty or to stock or strip cars or similar work on other than their regular assignment \* \* \*".

The current Agreement in the present case does not expressly limit the work for which they shall be paid extra under Rule 4-D-1 to "stocking or stripping cars or similar work on other than the regular assignment". However, if we are correct in our interpretation of "extra duty" in said Rule, it is not important that the work for which payment shall not be credited to the basic month's work is not particularly specified.

The deadheading here in question was incidental and necessary to the completion of the regular tour of duty by these claimants. It was necessary that they deadhead back to Fort Wayne in order to leave there on the last trip of their regular tour of duty.

Rule 4-E-1 of the Agreement provides that "deadheading when properly authorized will be paid the same as live service, \* \* \*". The Employees contend that this means that Claimants here should be paid under Rule 4-D-1. It would seem much more probable that the parties had in mind that such deadheading would be considered as part of and credited to the 240 hour basic month.

It might be noted here that none of the waiters involved in this case had worked 240 hours during the month in question. Each of them was paid from four to twenty hours for time not worked.

In view of the above we are of the opinion that the headheading service in question did not constitute "extra duty" within the meaning of Rule 4-D-1.

**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

None of the claimants is entitled to extra pay under Rule 4-D-1 for the deadheading service in question.

#### AWARD

Each of the claims is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

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