

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Dining Car Steward L. K. Wilmot and all other Dining Car Stewards for two hours each date operating on train No. 7 and 17, March 14, 1950, and all subsequent dates when required to report for train No. 17 at Milwaukee, Wisconsin.

EMPLOYEES' STATEMENT OF FACTS: These Dining Car Stewards were called for train No. 7 in Chicago, stocked their Dining Car, departing and serving dinner between Chicago and Milwaukee and are compensated in continuous service until their arrival at Milwaukee. They departed from Chicago on train No. 7 at 6:20 P.M. arrived in Milwaukee at 7:40 P.M. and are held in Milwaukee, departing on train No. 17 at 11:30 P.M. An additional two hours is claimed each date because these Stewards are released at Milwaukee after completion of their trip on train No. 7 and are again required to report for duty at 11:30 P.M. on train No. 17 in accordance with Dining Car Stewards' Schedule Rule No. 6.

POSITION OF EMPLOYEES: These Dining Car Stewards went to work at 2:00 P.M., and were required to stock their car, departed on train No. 7 at 6:20 P.M., arrived at Milwaukee at 7:40 P.M., and were held there until train No. 17 departed at 11:30 P.M. Dining Car Stewards' Schedule Rule No. 6 reads as follows:

"DEPARTURE DURING REST PERIODS"

"Stewards required to report for trains which are scheduled to depart between the hours of 9:00 P.M. and 4:00 A.M., where sleeping accommodations aboard trains are provided and available after completion of duties, shall be paid at the pro rata rate for time actually worked, or held until sleeping accommodations are available, with a minimum of two (2) hours."

A room was provided effective March 14, 1950, at the Towne Hotel for the rest period of these Dining Car Stewards at Milwaukee, in compliance with Dining Car Stewards' Schedule Rule 24. These claims were submitted to the Carrier in the following letter dated September 13, 1950:

"Attached please find time cuts for Dining Car Steward L. K. Wilmot which amounts to a total of two hours not allowed each date March 28, April 3, 18, 25, May 6, June 19, 30, July 22, August 2 and

Award 5102; therefore, this Rule has been fully considered in connection with the Award already rendered. However, we repeat that Rule 6 has no application because:

- (1) That Rule provides for payment only in connection with trains scheduled to depart between the hours of 9:00 P.M. and 4:00 A.M. and then only for time actually worked or held until sleeping accommodations are available.
- (2) The stewards assigned to No. 1-No. 17-No. 18 perform no work during the period of release at Milwaukee and during that period of release sleeping accommodations are available to them.
- (3) When they board Train No. 17 at 11:30 P.M., sleeping accommodations are also available to them and no work is required of them until the next morning.

It is the Carrier's contention that under the facts and circumstances existing since March 14, 1950, the claim is not supported by schedule rules and we respectfully request that same be declined or, as previously suggested, that it be dismissed on the basis that the resubmission of the claim, once decided by your Honorable Board, is improper.

OPINION OF BOARD: The record in this dispute discloses the issue herein involved was disposed of in Award 5102. Therefore, the question presented is moot, and should be dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing 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

That the claim will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of February, 1952.