

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of 8 hours pay for November 24, 1949 for Mr. William L. Enos, Jr., extra dining car steward, account of being held at Baltimore, Md. for 24 hours after stocking dining car 1060 on November 23, 1949.

Claim 8 hours pay for November 27, 1949 for William L. Enos, Jr., extra dining car steward, account of his being held at Washington, D. C. from November 26, 1949 until November 28, 1949 on dining car 1060.

The two questions stated above also apply to Stewards J. C. Herzer and E. Lee Smith.

EMPLOYEES' STATEMENT OF FACTS: On November 23, 1949, Mr. Enos was notified to report at Camden Station to stock dining car 1060 for a special movement. After stocking dining car 1060, he was instructed to report at Washington on 25th of November 1949 to complete stocking and icing diner.

Mr. Enos arrived on special movement at Washington, D. C., on November 26, 1949 and was instructed to report on November 28, 1949 to unstock diner 1060.

POSITION OF EMPLOYEES: In the instant dispute the Employees desire to establish the Memorandum of Conference was entered into between Superintendent James B. Martin and former Local Chairman H. E. G. Besley of the Trainmen's Committee at Baltimore, Md. on February 21, 1950 at which time the following Memorandum of Conference was entered into by the referred to parties:

"THE BALTIMORE AND OHIO RAILROAD COMPANY

**MEMORANDUM OF CONFERENCE HELD AT BALTIMORE, MD.
ON TUESDAY, FEBRUARY 21, 1950**

BETWEEN

Mr. J. B. Martin, Superintendent and Mrs. H. E. Besley, Local Chairman of Stewards, B. R. T.

Enos did in fact return to his residence in Baltimore after being relieved from duty at Washington on November 26, 1949. Therefore, Extra Steward Enos was not "held" as required by Rule 7.

CONCLUSION

The Carrier asserts that the Employes to sustain the instant claim must show that on the dates involved, both of the conditions outlined in paragraph (a) of Rule 7 existed. The claim is not sustainable unless the two conditions did in fact exist.

The facts of record herein show conclusively that neither of the conditions provided in Rule 7 existed on November 24, 1949, and one of the conditions did not exist on November 27, 1949. The claim is sustainable unless the two conditions existed concurrently on both dates.

In view of all that is contained hereinabove, the Carrier respectfully requests this Division to find this claim as being without merit and to deny it accordingly.

The Carrier submits that all data submitted in support of the Carrier's position in this case has been presented to or is known by the other party to this dispute.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is made by the Trainmen's Committee in behalf of Extra Dining Car Stewards William L. Enos, Jr., J. C. Herzer and E. Lee Smith. Each was the steward in charge of a dining car in a special movement from Silver Springs, Maryland, to Philadelphia, Pennsylvania, and return. Claim is made for each of the Claimants for eight hours' pay on November 24 and 27, 1949, on account of being held in service. We shall only refer to Claimant Enos in our discussion of the claim as what is said of his rights applies equally to Herzer and Smith.

On November 23, 1949, Carrier notified Enos to report at Camden Station to stock dining car 1060 for a special movement. After working that day he was instructed to report at Washington on November 25, 1949 to complete the stocking and icing of the diner. He then returned to his home where he spent Thanksgiving Day, November 24. He reported at Washington on November 25 and completed stocking and icing the diner. He returned from the special movement on November 26 and was then instructed to report on November 28 to unstock diner 1060. He thereupon returned to his home where he spent Sunday, November 27. On November 28 he reported and unstocked the diner.

Rule 7 (a) provides:

"Stewards who arrive at terminals in extra service or on special trains and are held twenty-four (24) hours will be paid eight (8) hours and similarly for each twenty-four hour period thereafter held."

Because Enos retained the keys to dining car 1060 while released from duty on November 24 and 27, it is the contention of the Organization that he was responsible for the contents of dining car 1060 and therefore "held twenty-four hours" within the intent and meaning of that language as used in Rule 7 (a). Whether or not Enos was actually responsible for the contents of the dining car while off duty, merely because he retained the keys thereto, we shall not here decide. For the purpose of this discussion we shall assume he was.

Carrier released Enos from duty on November 23 and 26. He was not required to report for duty on either November 24 or 27, nor keep himself in readiness to do so if called. In fact, he spent both of these days at his

home. Under this situation we do not think he was "held twenty-four (24) hours" within the intent and meaning of that language as used in Rule 7(a).

Rule 13(j) provides, in part:

"All stewards not regularly assigned will be placed on extra list . . . extra stewards will work first in, first out."

It is suggested that Carrier failed to put Claimant's name on this list on either November 24 or 27. Assuming that Carrier was required to do so and failed, that would not benefit Claimant here for he has made no showing that, because thereof, he lost work he would have been entitled to.

We find no merit in this claim.

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 Employee involved in this dispute are respectively carrier and employee 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.