

**Award No. 7043**

**Docket No. DC-7054**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Dudley E. Whiting, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**SEABOARD AIR LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the Local Committee (BRT) for Dining Car Stewards for the payment of one hour and fifty minutes each round trip, Washington to Hamlet and return, Trains 7-8, as follows:

For Steward E. F. Waldrop, one hour and fifty minutes, as here set forth, each round trip on May 9-10, 11-12, 13-14, 15-16, 17-18, 19-20, 21-22, 23-24, 25-26, 27-28, 29-30, 31 and June 1-2-3, 1951, and each round trip thereafter.

For the estate of Steward W. M. Hitt (deceased) one hour and fifty minutes, as here set forth, each round trip on May 10-11, 12-13, 14-15, 16-17, 18-19, 20-21, 22-23, 24-25, 26-27, 28-29, and one hour and twenty minutes arrival time the night of May 30, 1951.

For Mr. Hitt's replacement, and/or such other extra or regular stewards as may work the assignments, one hour and fifty minutes each round trip, which contemplates one hour and twenty minutes for each arrival at Hamlet on Train No. 7, and thirty minutes on each departure of Train No. 8 from that point, as do the claims outlined above.

**EMPLOYEES' STATEMENT OF FACTS:** On April 21, 1949, as a result of change in Dining Car Schedules to the effect that commencing April 24, 1949, through dining car service would be discontinued on Train 7-8, and the diners which had previously run from Washington to Miami would be cut out of Train 7 at Hamlet, southbound, and cut into Train 8 at Hamlet, northbound, protest was made to General Superintendent of Dining Cars, Mr. C. G. Douglass, by Local Chairman E. S. Burlingame, to the number of hours called for on the schedule, in that time was started northbound (#8) fifteen minutes after the train was scheduled to leave; and cut at night southbound (#7) at ten P.M., one hour and twenty minutes before the train was scheduled to arrive at cut-out point; copy of protest by the Local Chairman to the Superintendent of Dining Cars is here quoted in the record:

accommodations as they were satisfied with the sleeping accommodations provided on the dining car. However, as indicated in letter of December 10, 1951 from General Superintendent of Dining Cars to the Local Chairman (quoted in Carrier's Statement of Facts), such accommodations would be made available provided the affected stewards wanted them.

In summary, it is the position of the Carrier that:

1. The instant claims are without merit as the affected stewards were properly paid under Article 2, Section 1, the applicable portion of the controlling agreement.

2. It has been a long established practice on this Carrier to provide sleeping accommodations for stewards on dining cars, such practice having been in existence many years before the first agreement was negotiated with the Dining Car Stewards and has continued up until the present time although in recent years this practice has been minimized as far as possible.

For the above reasons the Carrier respectfully submits that the alleged claim in the instant case is entirely without merit and should be denied.

The Carrier affirmatively states that all data contained herein has been presented to the employe representatives.

**OPINION OF BOARD:** It does not appear to us that a cot to be set up in the diner can be considered as available sleeping accommodations within the purview of Article 2, Section 1 and Article 2, Section 8 (c) while the diner is being operated as part of a passenger train. Consequently the claim must be sustained.

**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 Employes involved in this dispute are respectively carrier and employes within the meaning 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 Agreement was violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1955.

#### DISSENT TO AWARD 7043, DOCKET DC-7054

Article 2, Sections 1 and 8(c), upon which the instant Award is based, refer unqualifiedly to providing "sleeping accommodations" aboard trains or in cars detached from trains. Accordingly, this Award is based upon the false notion that a cot is not a sleeping accommodation and it writes into the provisions, supra, an exception not now contained therein.

If it had been intended to exclude "cots" from "sleeping accommodations" within the purview of Article 2, Sections 1 and 8(c), it would have been a very simple matter for the parties to have so provided. The omission of any and all exceptions from these provisions should have been accepted as an indication that the parties intended that there be none. It is well settled that we can only interpret the contract as it is and treat that as reserved to the carrier which is not granted to employees by agreement (Award 2491). As we said in Award 6031, with this same Referee participating, this Board cannot "write new rules into the agreement".

The Carrier cited a long standing practice which is not inconsistent with the requirements of the rules. That practice should have been accepted as indicative of a practical construction of Article 2, Sections 1 and 8(c), by the parties themselves.

For the above reasons this Award is in error and we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ E. T. Horsley

/s/ J. E. Kemp

Carrier Members