Award No. 7147
Docket No. DC-7264

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of Dining Car Stewards J. W. Marchbanks and C. W. Wolfrum, Northern District, for additional compensation in the amount of eight hours and 30 minutes, October 24, 1953.

EMPLOYES' STATEMENT OF FACTS: On October 23, 1953, claimants were called at Ogden (away-from-home terminal) for extra service on special train designated as Postmaster Special and handled train from Ogden to Oakland via Salt Lake City.

On arrival at Reno, Nevada, an intermediate point enroute, October 24, 1953, the train was stopped for several hours to permit the Postmasters to visit that city.

Claimants made claim for continuous time (deducting designated rest periods) from time brought on duty at Ogden until released at Oakland (home terminal); however, Carrier alleges claimants were instructed to release crews at Reno from 11:00 A. M. to 9:30 P. M., October 24, 1953, and accordingly deducted 8½ hours from payment made to claimants.

POSITION OF EMPLOYES: This claim was submitted to Carrier's Assistant Manager of Personnel on appeal by Employes' General Chairman under date of February 4, 1954 (Employes' Exhibit "A").

Correspondence between Carrier's Division Superintendent and Local Chairman, BRT, as indicated in General Chairman's submission of February 4, 1954, is included in Employes' Exhibit "A."

The claim was discussed in conference, February 9, 1954, and was denied by Carrier's Assistant Manager of Personnel under date of February 16, 1954, file DC 169-4 (Employes' Exhibit "B").

Under date of June 10, 1954 (Employes' Exhibit "C"), Employes' General Chairman advised Carrier that the claim would be referred to the National Railroad Adjustment Board, Third Divsion and requested they join in the submission; however, under date of July 9, 1954, file DC 169-4, (Employes' Exhibit "D"), Carrier declined to join in the submission.

This claim arises under the provisions of Rule 2, Sections (d) and (e), Dining Car Stewards' Agreement:

noted that stewards went on duty at 5:30 A. M. and went off duty at Oakland (set-out point) at 7:30 P. M. that date, and that stewards **claimed 14 hours** (not 16 hours) for service to time of release en route that date and were so compensated.

Carrier's Exhibit "C" is a time report of dining car steward assigned to carrier's trains 5 and 6 between Los Angeles, California and New Orleans, Louisiana. It will be noted that on June 3, 1950 the steward went on duty en route at 5:30 A. M. and off duty at Houston (set-out point) at 9:00 P. M., and that **15½ hours was claimed** and allowed on that date. Notwithstanding that Carrier's Exhibit "C" concerns a regularly assigned run, it is equally pertinent to the instant claim, since Section (e) of Rule 2 provides that for extra service (special trains) time shall be computed on the same basis as for regularly assigned runs. Carrier's records show that as far back as 1933 it was the practice on assigned runs to deduct time released at a set-out point (such as Reno in the instant dispute) in computing trip time.

In handling the claim on the property the petitioner has cited and relied upon Rule 2, Sections (d) and (e) of the current agreement.

Sections (d) and (e), Rule 2, of the current agreement, quoted supra, lend no support by inference or otherwise to the instant claim, but, as established above, clearly support the carrier's position.

The petitioner is simply attempting to secure through an award of this Division a new agreement provision over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, but on the contrary, the carrier's action was clearly contemplated by the agreement, the carrier respectfully submits that, within the meaning of the Railway Labor Act, the instant claim involves request for change in agreement, which is beyond the purview of this Board. It is a well established principle that it is not the function of this Board to modify an existing rule or supply a new rule where none exists. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without basis or merit and, therefore, respectfully submits that it is incumbent upon this Division to deny the claim.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were assigned to a special train, the Postmasters' Special, which left Salt Lake City at 6:30 P. M. on October 23, 1953. The train arrived at Reno, Nevada at 10:00 A. M. on October 24 and was placed intact on a yard track; it remained there all day while the passengers visited Reno, finally departing at 12:01 A. M. on October 25 and arriving at Oakland, California at 7:45 A. M. the same day.

Claimants were released from duty at Reno from 11:00 A. M. until 9:30 P. M. on October 24. They claimed time from 5:00 A. M. until 9:30 P. M. on that date, a total of 16½ hours. Carrier allowed them eight hours. The present claim is for the additional 8½ hours.

Both parties rely upon Rule 2(d) and (e) of the Agreement:

> "(d) For regularly assigned runs time will be counted as continuous on each trip from time required to report for duty until released from duty at home or layover terminal, set-out or turning point, subject to deductions for rest periods during night-time hours, under circumstances where sleeping accommodations are provided

and available aboard trains or in cars detached from trains, which may be determined by the company in both regular and extra service, but time deducted shall not exceed eight (8) hours and shall be within the period 9:00 P. M. to 6:00 A. M., except that where steward is required to remain on duty during said rest periods time will be allowed therefor on actual minute basis until released.

(e) For extra service, such as on helper diners in regular trains, diners in extra sections of trains, and diners in special trains, time shall be computed on the same basis as for regularly assigned runs; but not less than eight (8) hours (including service hours) shall be allowed in any one day (hereby defined as period between 5:30 A. M. and 9:30 P. M.) in connection with a layover at layover terminal, setout or turning point, except when such layover occurs on day of departure from or arrival at home terminal."

It is clear that the only question before us is whether claimants' release from duty on October 24 was at a "set-out point" under the rule. If it was, the claim should be denied. If it was not, the claim should be sustained. No definition of the term "set-out point" is found in the Agreement. Claimants contend that a set-out occurs only when a car is set out alone from the rest of the train, and is later picked up and moved by another train. Carrier contends that any number of cars or an entire train as in this case may constitute a set-out and that each car of the cut of cars or train set out is considered itself to have been set out.

Each party offers self-serving assertions that the meaning it contends for is the well-known and accepted meaning in railroad parlance. However, neither is able to support such assertions with convincing evidence. Claimants offer none. Carrier offers certain time sheets submitted in connection with other train movements to support its view, but we find them of no help in settling the question. Nor does a resort to the dictionary offer any assistance in determining the meaning of the phrase "set-out" as used in the rule.

Since, after studying the submissions of both parties, we can find no evidence on which to base a finding that the meaning contended for by claimants is the one which was intended by the parties to the exclusion of the meaning contended for by Carrier, the claim must be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 there was no violation of 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 21st day of October, 1955.