

Award No. 7476

Docket No. DC-7353

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Livingston Smith, Referee**

**PARTIES TO DISPUTE:**

**UNITED TRANSPORT SERVICE EMPLOYEES**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** The Baltimore and Ohio Railroad Company violated Article 6 (a) of the current agreement between the Carrier and this Organization when, on April 25, 1954, sleeping accommodations between the hours of 10:00 P. M. and 6:00 A. M. were not provided and compensation in lieu thereof was not made to crew members of Dining Cars 1035, 1048 and 1059 enroute from Chicago, Illinois to Baltimore, Maryland on Train No. 26.

Claim is that Charles Holley, George Staley, Samuel McLurkin, Oscar Coffee, Aaron Small, Robert Armstrong, David Ball, M. F. Hosmer, Sidney Jones, L. H. Newsome, James Weaver and Thomas Dimmins be compensated as provided in Article 6 (a) of the agreement.

**EMPLOYEES' STATEMENT OF FACTS:** On April 25, 1954 Baltimore and Ohio Dining Cars 1035, 1048 and 1059 were enroute from Chicago to Baltimore on the advance section of Train No. 26 with crews for each car aboard. Carrier provided a Pullman car on Train No. 26 for the purpose of providing sleeping accommodations for the three dining car crews. However, no Pullman Porter had been assigned to the car, nor was a Pullman berth key with which the berths could be let down available to the Dining Car employees. Under these circumstances, the claimants could not make use of the sleeping accommodations and were forced to sit up all night enroute to Baltimore.

The current rules agreement, effective March 16, 1948, between the Baltimore and Ohio and this Organization in Article 11 (a) provides that when sleeping accommodations are not furnished between the hours of 10:00 P. M. and 6:00 A. M., employees will be paid for these hours. Article 11 (a) reads:

"Employees required to deadhead by proper authority, with or without dining car, will be paid on the same basis as service, except when deadheading between the hours of 10:00 P. M. and 6:00 A. M.; provided, when sleeping accommodations are not furnished time will be allowed on the same basis as service for deadheading between the hours of 10:00 P. M. and 6:00 A. M."

Obviously, sleeping accommodations, under the intent and meaning of Article 11 (a) were not furnished on the night of April 25, 1954, notwith-

On the basis of the factual showing in this case and in the absence of any rule or practice, the carrier asserts that the claim here made at all its parts is essentially without merit and respectfully requests this division to deny it.

In accordance with the requirements contained in this Division's Circular No. 1, issued October 10, 1934, the carrier submits that all data 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 brought in behalf of 12 named individuals under Article 6 (a) and 11 (a) of the effective agreement. It is alleged that compensation is due each under these rules account of Carrier's failure to provide sleeping accommodations on the date in question.

Claimants held assignments as members of Dining Car crews on three Dining Cars. The train at the time was enroute between Chicago, Illinois and Washington, D. C. Attached to the train was a "Dormitory Car" to which dining car crews retired during the hours they stood released, such hours in this instance being 10:00 P. M. to 6:00 A. M.

There was in most instances a Pullman porter assigned to these "Dormitory Cars" but on this occasion such car was not so attended at the time the train left Chicago, however this deficiency was corrected by the placing of a porter thereon when the train arrived at Pittsburgh, Pa., at 1:00 A. M.

Claimants assert that their accommodations were not ready for their use nor was there a "berth key" "readily available" for their use; with the net result that they should be compensated under Articles 6 (a) and 11 (a) which read as follows:

#### ARTICLE 6.

"Computation of Time. (a) On straightaway runs employes' time will be computed as continuous from the time required to report for duty and do report, until released, subject to release each night between the hours of 10:00 P. M. and 6:00 A. M., as covered by Article 11 (a). If required to perform service after 10:00 P. M. or before 6:00 A. M., such time will be paid for on the minute basis with a minimum allowance of 30 minutes. Where rest period between 10:00 P. M. and 6:00 A. M. is less than four hours, continuous time will be allowed for the rest period.

#### ARTICLE 11.

"Deadheading. (a) Employes required to deadhead by proper authority, with or without dining car, will be paid on the same basis as service, except when deadheading between the hours of 10:00 P. M. and 6:00 A. M.; provided, when sleeping accommodations are not furnished time will be allowed on the same basis as service for deadheading between the hours of 10:00 P. M. and 6:00 A. M."

The record indicates that a part of these dining crews obtained a "Berth Key" from some member of the crew. Other members (these claimants) assert (1) that no "Berth Key" was available (2) that they either did not know how to lower the hatches or were afraid that they might hurt themselves in lowering the berths and (3) that it was incumbent upon the Respondent to have their sleeping accommodations ready for their use.

The record here indicates that some eighteen employes made up the crews on the three dining cars. Some of this number secured a berth key from a Steward, made ready their berths, and made use of same.

The Board concludes that the Claimants here by the use of ordinary diligence could have determined the existence and whereabouts of the Key and made use of same. Further, it is clear that Claimants here did not use the facilities available when a Pullman porter joined the train at 1:00 A. M. No justification for their failure to do so can be found in the record. In short, the lack of diligence and foresight was unwarranted and cannot be made the basis for granting the reparations sought.

**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 the Carrier did not violate the effective agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.