Award No. 7911
Docket No. DC-8120

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 495

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union, Local 495 on the property of the Seaboard Air Line Railroad Company for and on behalf of J. Bruce Bethea and other employes similarly affected that they be compensated for two hours at their pro rata rate for each trip made on trains 107-108 since May 15, 1950 until such time as sleeping accommodations have been provided for the said employes and reporting time has been advertised and established for the affected employes pursuant to provisions of current agreement.

EMPLOYES' STATEMENT OF FACTS: As a result of schedule effective April 30, 1950, trains 107-7, 8-108 were advertised as designated for the operation of two crews with home terminal at Washington, D. C. That schedule showed employes off duty at 10:00 p. m. with arrival at Hamlet, North Caroline at 11:35 p. m. South bound train 107-7 and departure Hamlet 5:45 a. m. with employes reporting time 6:00 a. m. on train 8-108 north bound. As a result of the advertising of schedule effective April 30, 1950 showing inconsistency of employes' off duty and hour and 35 minutes prior to arrival of train 107-7 at Hamlet, North Carolina and employes on duty fifteen minutes after departing time, train 8-108 from Hamlet, North Carolina, and as a result of Carrier not furnishing sleeping accommodations for employes while laying over while away from home terminal, Edmond Johnson, Organization's General Chairman, filed the following claim with carrier:

"June 15, 1950

Mr. C. G. Douglass
General Superintendent
Dining Car Department
Seaboard Air Line Railroad
5th and T. Streets, N. E.
Washington, D. C.

Dear Sir:

Kindly accept this notice as our formal claim for and in behalf of Mr. J. Bruce Bethea and all other employes similarly affected, that they be compensated for two hours at their pro-rata rate for each trip made on trains 107-108 since May 15, 1950, until sleeping accommodations have been provided for the said employes, and an agreed-upon reporting time has been advertised and established.

are no restrictions in the Collective Bargaining Agreement that would limit the Carrier in assigning this work to the employes. . . . The long established past practices were not changed by the Collective Bargaining Agreement and in fact were continued for many years after the agreement and they are enforceable to the same extent as the provisions of the contract itself." Also see Awards 5307, 5354, 5964.

Also, as held in Award 4493: "The Board has repeatedly held that where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. Awards 2436, 1397, 1257." Also see Award 4442 and Award 4086.

In First Division Award 15230 it was held:

> "The parties understand their rules better than anyone else and while living harmoniously under them, as they do for a time if there has been a meeting of minds, there grows up a history of uniform application serving the best possible advantage in interpreting and construing the intent of the rule. Unforeseen problems arising later, or growing ambition, or continued dissatisfaction, causes one or the other to seek either a broader or narrower scope of the rule, or a new rule altogether. Under the Railway Labor Act (45 U. S. C. A. 151 et seq.) the parties cannot attain their goal except through further negotiations and bargaining."

And in Third Division Award 5331 it was ruled:

> "Except insofar as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy."

As set out above, there is no merit to this claim and it should be denied. Carrier affirmatively states that all data contained herein has been made known to or discussed with Organization representatives.

OPINION OF BOARD: Claim is here made in behalf of J. Bruce Bethea, and other employes similarly situated for 2 hours compensation, pro rata rate, retroactive to May 15, 1952, and in the future until such violation ceases, account of failure to provide sleeping accommodations and adjust reporting time.

The Organization takes the position that paragraph 3 of Rule VIII specifically requires that sleeping accommodations be furnished employes while at away-from-home terminal. It was asserted that due to a change of schedule on trains 107-7, 8-108 employes are off duty an hour and 35 minutes prior to arrival of train 107-7 at Hamlet, North Carolina and on duty fifteen minutes after departure time of train 8-108 from this point. It was pointed out that cots placed in dining cars for use of dining car crews cannot be considered sanitary sleeping quarters nor can same be considered adequate while laying over, since only the use of dormitory cars while in movement or hotel accommodations while laying over meet the requirements of the Rule. The Organization relied upon Award 7043.

The Respondent pointed out that Rule 2 (g) specifically provides that pay for deadhead service between the hours set out in the Rule will not be allowed where sleeping accommodations are furnished, and that Rule 8 when considered in conjunction with 2 (g) contemplates the use of accommodations temporarily established on the train. It was asserted that sleeping accommodations were furnished during the lay over at Hamlet and were

the same as those furnished for the hour and 35 minutes between their release and arrival at Hamlet.

The rule with which we are here concerned requires the furnishing accommodations without cost to employes while away from Home Terminal. The Organization admits that this was done and makes no complaint as to the type of such accommodations when used at Hamlet. They (accommodations) are the same that were utilized during the one hour and 35 minutes after release from service but prior to arrival at Hamlet. The rule specifies accommodations as are available in company owned equipment. The accommodations used meet this criteria. The "sleeping accommodations" as set out in the rule can not be construed as meaning "sleeping car accommodations."

There is a distinct difference in the confronting rules and those we interpreted in Award 7043. This factor precludes a finding that Award 7043 is applicable or controlling here.

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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May, 1957.