Award No. 8723
Docket No. DC-8886

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 351, on the property of the Chicago and North Western Railway Company, for and on behalf of John O. Williams, buffet attendant, that he be reimbursed and made whole for meals while assigned buffet attendant. Trains 161-211-212, between Chicago and Ashland, Wisconsin and return, December 20, 1955 to January 3, 1956.

EMPLOYES' STATEMENT OF FACTS: Under date of February 28, 1956, Organization submitted a claim on behalf of claimant as per letter attached hereto as Exhibit A. Under date of March 6, 1956, Carrier offered to allow claim under provision of Rule 8, third paragraph, of the current agreement on file with this Board and incorporated herein by reference. The third paragraph of Rule 8 of the current agreement refers to expense not to exceed $1.50 for each 24 hour period allowed by Carrier when employes are held at away-from-home terminals in excess of 16 hours.

The Organization determined that the allowance in the claim as offered by the Carrier under Rule 8 (Employes' Exhibit B) was not consistent with the clear provisions of Rule 10 and, declining the offer, appealed the disallowance of the claim on the basis of Rule 10 to the highest officer designated on the property to hear such appeals. (Employes' Exhibit C.)

Under date of April 13, 1956, Carrier denied the claim (Employes' Exhibit D). After conference on appeal, Carrier reiterated its denial of claim under date of May 25, 1956 (Employes' Exhibit E).

Claimant was regularly assigned buffet attendant on Trains 161-211-212, Chicago en route Ashland, Wisconsin and return during period December 20, 1955 to January 3, 1956. The dining car included in the consist of these trains is cut out at Green Bay, Wisconsin and the train proceeds to Ashland and returns to Green Bay without dining car equipment. The terminal for claimant's assignment is Ashland, Wisconsin. Claimant is on duty during normal meal periods for the breakfast meal and supper meal between Green Bay and Ashland and return, a total of four meals for each round trip. Claimant reported out of Green Bay at 6:00 A.M. and was on duty until the late hours in the morning (10:30-11:00 A.M.) and again reported for duty about 4:00 P.M. and remained on duty until 11:00 P.M. into Ashland.

The railway company has heretofore indicated that it is its understanding that the meals for which reimbursement is actually claimed in this case are meals which claimant secured subsequent to arrival at Ashland and prior to going on duty at Ashland. These meals were therefore clearly not "meals while on duty and when deadheading under orders". Nothing in the Rule requires that the railway company furnish meals to employes subsequent to completion of their tour of duty, or prior to going on duty. It has never been contended on the property that any of the meals claimed were consumed either while on duty or while deadheading under orders. Admittedly, since claimant ate at Ashland the meals were neither consumed while on duty or while deadheading under orders.

The Carrier submits that it has completely complied with the requirements of the controlling agreement and the past application of such agreement on the property and has furnished Claimant Williams meals in the assigned dining car while on duty while such car was being operated. The meals for which claimant claims reimbursement are not meals which the railway company is required to furnish under the controlling agreement, since these meals were neither obtained while on duty, while deadheading under orders, or while facilities for obtaining meals were on claimant's train.

In conclusion the Carrier submits that the claim should be denied in its entirety.

All information contained herein has previously been submitted to the employes during the course of handling on this property and is hereby made a part of the particular question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: From December 20, 1955, to January 1, 1956, claimant was assigned to the position of Buffet Attendant on a lounge car that was part of the consist of Train No. 161-211-212, operating on said dates from Chicago, Illinois, to Ashland, Wisconsin, and return. On these trains a dining car was carried between Chicago and Green Bay, Wisconsin; no diner was on the trains between Green Bay and Ashland.

The record is inadequate in respect to the hours or periods during which claimant was on duty on the train as a Buffet Attendant and in respect to the hours or periods when he was off duty or resting on the train. However, the employes state, without contradiction by Carrier, that (1) on the northward trip claimant went on duty at 6:00 a.m., and went off duty at 10:30 or 11:00 a.m., and (2) as to the southward trip he reported at 4:00 p.m., and remained on duty until 11:00 p.m.

Claimant was furnished meals free of charge while the diner was part of the train but not after it was cut out or before it was put on. It does not appear that claimant ate any meals when the diner was not part of the train. On the contrary it appears that he ate his breakfasts and his evening dinners in Ashland after the morning arrivals and before the evening departures of the train, respectively. And in the initial handling of the claim on the property claimant presented receipts for amounts paid for some of such meals in support of his claim.

The employes contend that Carrier violated the plain language of Rule 10, which states that Carrier is to furnish free meals to an employe like claimant while he is on duty. They argue that (1) claimant was on duty on each

trip between Green Bay and Ashland; (2) he had normal meal periods during each such trip, going north and going south; (3) Carrier was obligated to feed him without charge on each trip at each such period, whether or not a diner was then carried on the train; and (4) Carrier failed to give him breakfast before he reported off at Ashland and (evening) dinner after he reported on prior to the Ashland departure.

Carrier and its representatives defend by arguing that (1) Rule 10 is silent as to when and how many free meals are to be furnished to an employe while on duty; (2) it has always been Carrier's practice to provide such meals only when there are facilities like a diner available for so doing; (3) claimant ate no meals on the train when such facilities were not available, and the Rule does not require Carrier to reimburse an employe for meals eaten while off duty; (4) Rule 8, which requires such reimbursement when an employe is held at his away-from-home terminal for more than 16 hours, is inapplicable because claimant was so held much less than 16 hours on each trip; (5) the employes failed to sustain their burden of factual proof in the case; and (6) to sustain the Employes in their position would be to rewrite Rule 10 in their favor, which is something this Board is not empowered to do.

The Board finds that the language of Rule 10 must govern the disposition of the instant case—if said language is clear and unambiguous. If it is not clear, then evidence on past practice must also be considered for possible illumination of the obscure language.

Rule 10 says that Carrier is to provide free meals to an employe while he is on duty. It is true, as Carrier asserts, that the Rule does not specify either the times when such meals are to be furnished or the number thereof per day or per tour of duty. Perhaps such detail would have been impossible or impractical in a rule of general application. However, it might have been possible and practical to include or add a phrase such as "at usual breakfast, lunch, or dinner periods" after the words "will furnish".

Carrier argues that, if the Board now interprets Rule 10 as if such inclusion were in the Rule, the Board would be rewriting the Rule and, thereby, exceeding its authority. The Board cannot agree. Certainly the Board would be exceeding its powers if, under guise of interpretation, it held, for example, that the Rule meant any particular number of meals, or that the Rule meant an employe could feed free as often as he liked, e.g., a snack every two hours, or that the meals had to be hot or cold or include at least four courses. But under the customs of our society the overwhelming majority of persons eat three meals a day—breakfast sometime in the morning, lunch sometime around mid-day, and dinner sometime in the evening. Consequently, the Board is of the opinion that, when the Parties wrote the language of Rule 10, they intended that an employe should be given free meals during such meal-times if they occurred while the employe was on duty. To so rule is not to rewrite the Rule. No other reasonable general interpretation can be made on the matter of when an on-duty employe, such as a buffet attendant, is to be given his free meals. It is not necessary that the employes present factual evidence in support of the thesis that the Parties had such intention when they wrote the Rule.

Carrier contends, in effect, that it would be unreasonable to expect Carrier to furnish free meals when dining car facilities are not available. Carrier has in fact long interpreted Rule 10 in this manner; hence, the development of the past practice on which Carrier in substantial part relies. But when Carrier asks the Board to place its stamp of approval on this interpretation, it may fairly be said that Carrier itself is requesting the Board to

rewrite the Rule in Carrier's own favor. The Board finds itself unable to do so because (1) there is no evidence that the Parties intended such an interpretation when they wrote the Rule; and (2) such evidence is required because other interpretations appear to be equally reasonable, e.g., the provision of a cold meal of adequate size, prepared before the diner is cut out of the train.

The last-mentioned point should make it clear that the Board's approval (in principle) of the Employes' interpretation and the Board's rejection of the Carrier's interpretation does not mean that henceforth, under similar circumstances, Carrier will have to carry a dining car over the whole route or trip for all such employes. In respect to the facts of the instant case, for example, Carrier could have operated the diner just as it did, i.e., cut it out and put it on at Green Bay, and still have fulfilled the requirements of the Rules as here interpreted. Under said construction claimant had to eat free during reasonable meal periods while on duty, as claimed, but he didn't have to eat a hot meal on a dining car while on duty.

The Board does not find that the language of Rule 10 is so ambiguous as to demand reliance on past practice. And even if the finding were that the rule is definitely ambiguous, there is no compelling evidence that the past practice set forth by Carrier was definitely agreeable to and accepted by both Parties since Rule 10 was negotiated.

There remains the matter of considering claimant's request for reimbursement. This involves an application of the Board's interpretation of Rule 10 to the available facts of the instant case, as above set forth.

On his northbound trips claimant received a free dinner after leaving Chicago at 6:30 p.m. but was not given breakfast between going on and off duty in the morning. Under the Board's interpretation of Rule 10 Carrier was obligated to furnish said breakfast. This meal could have been provided in the form of an adequate cold meal prepared before the diner was cut out at Green Bay; or it could have been provided in the form of payment to claimant in the amount of the cost to the Carrier of giving him an adequate hot breakfast if the diner had been kept on the train. Accordingly the Board directs that Carrier shall now pay claimant, for each morning he arrived on the train at Ashland during the inclusive claim period, an amount equal to the cost to the Carrier of providing either of the above-mentioned kinds of meals, Carrier to make the decision as to which kind of meal.

As to the southward trip, claimant did not receive a free (evening) dinner after he reported on duty at Ashland; but he was furnished a free breakfast before going off duty in Chicago. Under the Board's interpretation of Rule 10, Carrier had the obligation to furnish claimant said free dinner on all said evenings during the inclusive claim period. The Board directs Carrier to pay claimant for each such evening an amount equal to the cost to the Carrier of providing either an adequate cold meal or an adequate hot (evening) dinner if the dining car had been part of the train, Carrier to make the decision on which kind of meal.

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 Carrier failed to fulfill some of the obligations imposed by Rule 10 of the Parties' Agreement.

AWARD

Claim sustained to extent set forth above in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1959.