Award No. 10108
Docket No. DC-9789

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Time claim of Joint Council Dining Car Employes Local 516 on the property of Great Northern Railway Company, for and on behalf of Chef Cook Charles Cephas, Second Cook Prince Denman, Third Cook Harold Richardson, Jr., Waiter Marvie Williamson, Waiter Gabriel Thompson, Waiter Joseph Anderson and all other employes similarly situated, that they be compensated for 26 hours each at their current rates of pay per month for the months of March and April, 1956 account Carrier improperly compensating claimants in violation of rules of current agreement.

EMPLOYES' STATEMENT OF FACTS: Under date of May 22, 1956, Organization's General Chairman submitted time claim in the instant claim (Employes' Exhibit A). The claim was denied under date of May 28, 1956 by Carrier's General Superintendent Dining Car Department (Employes' Exhibit B). On May 31, 1956, appeal was filed with Carrier's Assistant to the President-Personnel, the highest officer designated on the property to consider such appeals (Employes' Exhibit C). Under date of June 11, 1956 the claim was denied on appeal (Employes' Exhibit D).

The instant claim arises out of establishment of run of Trains 4 and 3, Seattle to Williston and return, as set out in Bulletins Nos. 1 and 2 issued by Carrier January 10, 1956 (Employes' Exhibits E and F, respectively). Claimants were awarded assignment pursuant to said Bulletins Nos. 1 and 2 (Employes' Exhibits G, H, I, J, K).

The effective date of the assignment here involved was January 10, 1956 (Employes' Exhibit E and F). That assignment was abolished, Trains 4 and 3 Seattle to Williston and return, effective May 8, 1956 (Employes' Exhibit L).

POSITION OF EMPLOYES: There are two effective agreements covering claimants herein. The agreements between the parties herein effective May 1, 1950 includes within its scope pantrymen-waiters and waiters awarded assignment (Employes' Exhibits G and H). Agreement between the parties effective August 26, 1952 includes within its scope chefs, second cooks and third cooks awarded assignment (Employes' Exhibits K, J, I). Both of these agreements are on file with this Board and are incorporated herein by reference.

In the instant case, as has been shown previously here in this Submission:

(a) Claimants were compensated for all service rendered between 10:00 P. M. and 6:00 A. M., and

(b) Claimants were provided with the facilities and time in which to secure their night's rest.

2. Rules 29(c) and 26 were intended to apply only to dining car crews arriving at their home terminals on trains which had a scheduled arrival time prior to 12:00 midnight, as is conclusively shown in carrier's history of the development of these rules based on carrier's May 7, 1947 interpretation of Rule 35 of the 1941 Stewards' Schedule Agreement.

3. The important significance that the Stewards' organization, which has an identical rule provision covering Stewards, (Rule 34 of current Stewards' Agreement) never instituted a claim in behalf of the various stewards who were assigned to Train No. 3 between January 10, 1956, at which time this run went into effect, and the early part of May, 1956, at which time this run was discontinued. The stewards were fully aware there had been no rules violation because of the scheduled arrival time of 5:30 A. M. of Train No. 3 at Seattle, Washington, which was the home terminal of these stewards as well as claimants in case.

4. The recognition of the employes herein making claim that there was no merit to this claim as is evidenced by their lack of protest or institution of formal claim during the period this run of Train No. 3 was in effect. Had the organization felt there was any valid reason for their allegation that carrier had violated Rule 29(c) of the Waiters' Agreement and Rule 26 of the Cooks' Agreement, past dealings with this organization strongly indicate that this particular organization would not settle for sixty (60) days' additional compensation but would have processed for additional compensation from the first day the run went into force and effect. **The organization had full** knowledge of this run prior to its inauguration on January 10, 1956, **as the** organization was furnished copies of bulletins Nos. 1 and 2 (Exhibits L and M herein) **prior to the effective date of the run.** To wait until after a run has been discontinued, such run being in operation for four months, before making protest to carrier, such protest being based on an alleged rules violation, is not only grossly unfair and unjust but indicates quite conclusively that the Organization felt there was no rules violation or that the employes, represented by the organization, were not being damaged because of the 5:30 A. M. arrival time of Train No. 3 in Seattle.

5. Not only were claimants provided **sleeping and resting facilities until 6:30 A. M. of the last day,** the fifth day, of their working assignment, **these same claimants, since they were at their home terminal, were also given two complete days, the sixth and seventh day, of lay-over or rest before being required to report for duty again.** A careful examination of Bulletins Nos. 1 and 2 **(Exhibits L and M herein) will conclusively reveal that there was adequate time and facilities provided claimants whereby they received an adequate amount of rest.**

(Exhibits not reproduced.)

OPINION OF BOARD: This is a rules interpretation case. The basis for this claim is to be found in the Claimants' assignments to trains numbers 4 and 3 on the Seattle, Washington, to Williston, North Dakota, return run.

Each Claimant made four round trips during months of March and April, 1956, and, reportedly, should have received six hours and thirty minutes additional compensation per trip. The six and a half hours represent the span of time from 11:00 P. M. on the 4th day of the assignment to 5:30 A. M. on the 5th day of the assigtnment. The effective date of the assignment was January 10, 1956. The assignment was abolished on May 8, 1956.

In support of its claim, the Organization cited the following rules:

"Rule 26: Computation of Time and Rest Periods (Dining Car Chefs, Second and Third Cooks' Agreement).

(2nd Paragraph)

"Employes who arrive at their home terminal subsequent to 10:00 P. M. shall be considered as continuously on duty until the actual arrival of the train, unless such train is delayed sufficiently to permit such employes to secure their night's rest."

"Rule 29(c): Computation of time and rest periods (From Dining Car Employes' Agreement).

"Employes coming within the scope of this agreement who arrive at their home terminal subsequent to 10:00 P. M. shall be considered as continuously on duty until the actual arrival time of the train unless such train is delayed sufficiently to permit the employes to secure their night's rest, which shall consist of 8 hours."

Neither of the Rules cited above give the answer to the Referee's query: "Suppose the employes got their full rest without the train being delayed — what then?" The Labor member, however, when asked that question during panel arguments replied: "It doesn't make any difference. The men must be paid." Let us now determine if that opinion is correct and supported by the pertinent provisions of the Agreements.

An analytical reading of Rule 29 (c) and the second paragraph of Rule 26 leads inescapably to the following conclusion:

1. That the Rules are not clear and complete;

2. That the Rules must be read in the light of related provisions so that their full and proper meaning can be determined.

It is the Board's function and responsibility to interpret the language of agreements. Consequently, when the language of a particular provision is not clear or complete, the Board has the concomitant duty to analyze related contractual provisions — so that the intentions of the contracting parties may be correctly ascertained, if it is possible to do so.

In Award No. 6856 Referee Carter stated:

"The meaning of a written agreement must be gathered from the language used in it where it is possible to do so.' "Effect should be given to the entire language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible."

In Award No. 7360 Referee Larkin stated:

> "We must give effect to all pertinent language in the Agreement and not lift one clause out of context to bring about a result which the parties obviously did not intend."

It is our conviction that the opinions set forth above are sound and well reasoned. It is also our conviction — based on other related provisions of the Agreement — that the contracting parties did not intend that the employes should have their rest and get paid for it too.

We believe that related pertinent provisions of the Agreements give substantial support to our position. Accordingly, we will restate the Rules cited by the Organization and to Rule 26 — we will add the first paragraph of that Rule — and to Rule 29(c) we will add its related provision — Rule 29(b) — the first paragraph only:

> "Rule 26: Computation of Time and Rest Periods.
>
> "Time of employes in assigned service will be computed as continuous from the time required to report for duty at a terminal until released at the other terminal of the run, subject to release each night between the hours of 10:00 P. M. and 6:00 A. M. **If required to perform any service, or if not released from duty during such rest period, employes shall be allowed pro rata rate for all time so held from rest.** (Emphasis ours.)
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> "Employes who arrive at their home terminal subsequent to 10:00 P. M. shall be considered as continuously on duty until the actual arrival of the train, unless such train is delayed sufficiently to permit such employes to secure their night's rest."
>
> "Rule 29(b): Computation of Time and Rest Periods.
>
> "The time of employes in assigned service will be computed as continuous from the time to report for duty at a terminal until released at the other terminal of the run subject to release each night between the hours of 10:00 P. M. and 6:00 A. M. **If required to perform any service or if not released from duty during said rest time, employes shall be paid pro rata rates for all time so held from rest."** (Emphasis ours.)
>
> "Rule 29(c):
>
> "Employes coming within the scope of this agreement who arrive at their home terminal subsequent to 10:00 P. M. shall be considered as continuously on duty until the actual time of the train, unless such train is delayed sufficiently to permit the employes to secure their night's rest, which shall consist of 8 hours."

When the Rules' provisions cited by the Organization are read in the light of their related provisions — their meaning becomes clear and definite. The bold emphasized portions of the Rules, supra, unmistakeably indicate that only when the Employes are held from rest by the Carrier are they to be paid. In the instant case, the Claimants, who were held from rest, were paid their pro rata rate for all time so held from rest which is in keeping with the pertinent provisions of the Agreements.

Accordingly, the Board rules that the pertinent provisions of the Agreements do not support the Organization's position.

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

The Carrier did not violate the Rules of the Agreements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.

DISSENT TO AWARD 10108, DOCKET DC-9789

In this case the majority, consisting of the Referee and the Carrier Members, erred in concluding that the rules involved "are not clear and complete." It is difficult to imagine anything clearer and more complete than the language found in the Agreements that:

> "Employes who arrive at their home terminal subsequent to 10:00 P. M. shall be considered as continuously on duty until the actual arrival of the train, unless such train is delayed sufficiently to permit such employes to secure their night's rest."

The majority was aware that Claimants' arrival at their home station subsequent to 10:00 P. M. was not occasioned by delay but because the train was not scheduled to arrive at the home terminal until after 10:00 P. M., or at 5:30 A. M., to be exact. Therefore, applying the well established principle that the function of the Board is to interpret and apply agreements as written the amount of rest that employes get, or might get, under the circumstances prevailing in this case cannot serve to change the clear language of the rule. Claimants were entitled to the pay claimed.

The majority errs further in its analytical reading of Rules 26 and 29 of the two agreements. The fact that the parties, neither of whom are novices in the business of negotiating rules, dealt separately with employes "who arrive at their home terminal subsequent to 10:00 P. M." and those who are "released at the other terminal of the run" and for rest periods enroute is the best possible evidence that they never intended that the former be treated the same as the latter. Yet, that is the construction the majority has placed on the rules. Under the interpretation of the majority, the language quoted

above from Rule 26 of the Chefs, Second and Third Cooks Agreement, an almost exact duplicate of which is contained in Rule 29(c) of the Waiters Agreement, is rendered meaningless. Another well established principle is that the Board has no more right to destroy agreements than it has to make them. Furthermore, if the parties ever intended that the continuous duty status of such employes is also dependent upon whether they do or do not obtain a night's rest, they were fully competent to say so. They didn't and this Board is not empowered to say so for them because we are not a rules writing agency; not supposed to be, that is.

Award 10108 falls far short of the principles stated in Awards 6856 and 7306, cited by the majority. Therefore, I dissent.

/s/ G. Orndorff
Labor Member