Award No. 10250

Docket No. PM-10934

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of B. H. Munchus, L. V. Lewis, Willie Metcalf, and C. C. McCoy, who are now, and for some years past have been, employed by the Fort Worth and Denver Railway Company as Waiter-In-Charge, Chef Cook, Second Cook, and Porter-Waiter, respectively.

Because the Fort Worth and Denver Railway Company did, through Mr. C. W. Ruffner, Assistant to General Manager, finally deny the claim filed for and in behalf of the above-mentioned employes on July 23, 1958, in which claim the Organization maintained that the above-mentioned employes should have been additionally compensated for the hours stipulated in the original Statement of Claim (7 hours and 15 minutes) on trip of February 14-15, 1958, as it is provided for in Rule 12 of the Agreement governing the wages and working conditions of the class of employes of which the above-mentioned individuals are a part.

And further, for the above-mentioned employes to be paid for the hours stipulated in said claim.

EMPLOYES' STATEMENT OF FACTS: Your Petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is authorized to represent all employes of the Fort Worth and Denver Railway Company classified as dining car employes, working under the jurisdiction of the dining car service.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent Waiter-In-Charge B. H. Munchus, Chef Cook; L. V. Lewis, Second Cook; Willie Metcalf, and Porter-Waiter C. O. McCoy, who are now, and for some time past have been, employed by the Fort Worth and Denver Railway Company in the capacities set forth above.

Your Petitioner further sets forth that in line with their regular duties these men were assigned to deadhead on Train No. 8 from Fort Worth on February 14-15, 1958, leaving Fort Worth at 10:45 P. M. for the purpose of going on duty the following morning at 6:00 A. M.

Your Petitioner further sets forth that on the trip in question as above

Referee Livingston Smith, covering a similar claim for compensation, wherein it was alleged that proper sleeping accommodations were not furnished. In the Opinion of the Board, it was held, in part:

> "Here accommodations were available. Whether or not they were 'Useable' is questioned by Claimants. While there is a conflcit in the record on this point it is noted that at least one member of this crew made use of the sleeping quarters without apparent discomfort. Likewise, we do not think that Rule 2 contemplates payment on a continuous time basis under these conditions. To so interpret this rule would have the effect of reading into the rule that which is not there."

In the instant dispute, it was by agreement (Carrier's Exhibit No. 3) that the employes placed their bedding on the foam rubber seats of dining-lounge cars instead of cots; Fred Dickey worked as Pantryman-Waiter on Train No. 8 the night of May 15 and 16, 1958 with other claimants and did not make any claim account cots not being furnished, which shows that "at least one member of this crew made use of the sleeping quarters without apparent discomfort"; the rules relied upon by the Petitioner only call for "sleeping accommodations" and it can not be denied that sleeping accommodations were furnished; and to sustain the claims of the Employes would be destroying the plain provisions of Rules 12 and 27 and the letter-agreement of August 10, 1957 (Carrier's Exhibit No. 3), which could not be done without reading into these agreements something that is not there. The fact is, the above-referred to agreements provided for the sleeping accommodations that the Petitioner has complained of and made the basis of the Employes' position.

In view of the wording of Rules 12 and 27 advanced by the Petitioner as supporting its position, it is evident that sleeping accommodations were furnished while these employes were deadheading, which is all that is required by these rules. Moreover, the letter-agreement between Messrs. Cobel and Wiley dated August 10, 1957, Carrier's Exhibit No. 3, is definite evidence that the very thing complained of in these claims was agreed to and that this agreement is still in effect. The claim is, therefore, without merit and must be declined.

The Carrier feels this is a nuisance claim that should never have been progressed beyond the local level, and the Board surely should not have been requested to take up its time in considering a case that is fully covered by the rules and agreements between the parties to this dispute. These claims for compensation for time released from duty enroute are without merit under the agreement rules here controlling, and, accordingly, the Board is expected and requested to deny them.

All matters contained herein have been subject of conference discussion and correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to that involved in Docket PM-10932, Award 10248 and is subject to similar disposition.

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 Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1961.