Award No. 10902
Docket No. DC-10506

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 516

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Union Local 516 on the property of the Great Northern Railroad Company for and on behalf of Maceo Moody, waiter that he be compensated for eight hours pay at his regular rate under the provisions of Rule 37 of the current agreement between the parties.

EMPLOYES STATEMENT OF FACTS: Under date of September 3, 1957, claimant submitted his time claim to Carrier's General Superintendent Dining Cars for eight hours pay, (Employes' Exhibit A). Thereafter Carrier's Superintendent Dining Cars denied the claim on the ground that Rule 24(a) of waiters' agreement was applicable to the claim, (Employes' Exhibit B).

On September 20, 1957, Organization's General Chairman appealed the denial of the claim to Carrier's Assistant to President-Personnel, the highest officer designated to hear such appeals (Employes' Exhibit C). On September 30, 1957, Carrier's Assstant to the President-Personnel declined the claim on appeal (Employes' Exhibit D).

On August 30, 1957, investigation was held in the office of Carrier's General Superintendent Dining Car Department of claimant together with two other employes on charges involving the following alleged irregularities occurring on Ranch Car 1241, Train No. 32, July 29, 1957:

1. Serving liquor not opened in the presence of guests, in violation of instructions.

2. Over-collecting from guests for beverage service.

3. Failure to properly account for all moneys collected.

The above charges could have no possible connection with claimant. The operative's report did not mention claimant who was Waiter No. 1 assigned to Ranch Car 1241, Train 32, July 29, 1957. Nevertheless, Carrier noticed claimant in for formal investigation on the foregoing charges.

Claimant was found to be free of any responsibility with regard to any of the alleged irregularities (Employes' Exhibit D).

of compensation" incurred as a result of being held from service pending investigation. In the instant case, Mr. Moody did not suffer any "loss of compensation" and is therefore not entitled to any compensation as a result of being required to attend this investigation.

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. Lack of schedule rule support.

2. Carrier complied in full with Rules 21 and 24 of the current agreement.

3. The claimant, Mr. Moody, was found blameless, and since he had lost no time or pay he was not entitled to any compensation.

4. It was not known before the investigation whether Mr. Moody was guilty or not, and the investigation was held to develop facts and place responsibility on the guilty person or persons.

5. Rule 37 upon which the Employes have relied so heavily in support of their position only applies to an employe being required by Carrier to attend court and a Carrier investigation, as in the instant case, is certainly not to be construed as being a court proceeding.

6. The facts and circumstances involved in the irregularities which occurred on Ranch Car 1241, Train 32 on July 29, 1957, were certainly serious enough to warrant Carrier holding a formal investigation in order that all the facts could be ascertained and responsibility placed upon those who had violated Carrier's rules and instructions on that particular date.

7. Mr. Moody, the claimant, as a member of the crew which performed service on July 29, 1957, on Ranch Car 1241, Train 32, was under investigation for the irregularities which occurred on the particular date in case and he was not called or required by Carrier to attend this formal investigation as a witness. Therefore, Rule 37 has no application in the instant case and Mr. Moody is not entitled to any compensation for August 30, 1957, for reason that he was found entirely blameless as a result of the findings of the formal investigation and had lost no pay or time from his regularly assigned position as a waiter.

For the reasons outlined herein, and the conclusive evidence presented by Carrier herein, this claim of the Employes is entirely lacking in merit and must be denied, for to find otherwise would constitute an unjustifiable action of your Board and would, in effect, place a very strained and distorted interpretation on Rule 37. The Carrier submits that anything but a denial award would not only constitute a gross injustice, but would represent an excessive exercise of the jurisdiction of your Board.

(Exhibits not reproduced.)

OPINION OF BOARD: An investigator for Carrier having checked the service on the Ranch car where Claimant worked as a waiter reported that members of the dining car crew, which included the steward and three waiters (one of whom was Claimant) were guilty of certain irregularities. Carrier set up an investigation for the purpose of determining who was responsible for the irregularities. Claimant and the other two waiters were required to attend the investigation. As a result of the hearing Carrier determined that the steward was responsible and Claimant was exonerated. Before this determination was

made Claimant filed the subject claim requesting eight hours' pay. It was denied by the Carrier at all stages.

The employes rely upon Rule 37 of the Agreement, which reads in part:

> "Employes required by the Company to attend court or give similar service shall be paid eight hours' pay at their regular rate for each calendar day so held. . . ."

They argue that Carrier had no real basis for believing that Claimant was responsible for the alleged irregularities since the investigator's report did not mention Waiter No. 1 (Claimant); therefore the Carrier by giving Claimant notice to attend the investigation was calling him as a witness, and that this was requiring him to give similar service within the meaning of Rule 37.

The Carrier contends that this was a disciplinary investigation under Rule 21 to which Rule 37 has no application; that "similar service" as used in that rule has reference only to court hearings or inquests. It further argues that Claimant was one of the principals in the investigation and was not called merely as a witness, and the Agreement contains no provision for payment in such a situation where the employe has not been held from service.

Th board has been referred to no awards holding that Rule 37 applies to investigations by the Carrier. There is an award of the First Division holding specifically that the phrase "similar service" as used in a similar Rule does not apply to Carrier's investigation. The Board is inclined to this position. However, it is not necessary to rule specifically on this point in view of the Board's determination that Claimant was not called as a witness by the Carrier and so was not required to give similar service.

The Employes make much of the fact that Carrier did know or could have known prior to the date of the investigation that Claimant was not one of the waiters mentioned in the report and could not therefore have been involved in the irregularities. It may well be that a careful check by Carrier would have revealed this but such fails to show that Carrier did not in good faith regard Claimant as a principal. The crew of which Claimant was a member was under investigation and although the report did not mention him by number, conceivably all of the waiters might have been acting in concert. Carrier was within its rights in calling all of the waiters in for an investigation, in which they had a mutual interest to determine who was responsible. There is nothing in the record indicating that the Carrier's action was not bona fide or that it was merely a ruse to require Claimant's presence as a witness and thus avoid paying him.

Since Claimant was called as a principal, was exonerated and was not held from service Carrier is under no obligation to compensate him for the time involved.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1962.