

Award No. 10962

Docket No. DC-10861

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 848

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 848 on the property of the Chicago, Burlington and Quincy Railroad Company, for and on behalf of Chef C. K. Dorsey, Waiter J. S. Reid and all other employees similarly situated that they be paid actual time deadheading during hours of 10:00 P. M. and 6:00 A. M. on train No. 1, July 25, 1957, and train No. 10, July 23, 26 and 28, 1957, account failure of the Carrier to furnish adequate sleeping accommodations in accordance with the effective agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimants were assigned to Carrier's train No. 10 on July 23, 26 and 28, 1957 and to train No. 1 on July 25, 1957. On each of these dates, there were so-called sleeping facilities on the trains in question to be used by claimants while deadheading during the hours of 10:00 P. M. and 6:00 A. M. These facilities consist of an area about one-fourth the size of a standard railroad car and in this space a crew of fourteen (14) or more are expected to sleep.

Further, the sleeping area is an air-tight compartment as the single window cannot be opened and as the door must be kept closed since it faces a hallway used by passengers and other railroad employees going through the train. The air conditioning system supplies the only means of air circulation, and in mid-summer, as is the case in this dispute, failure of the air conditioning system results in a temperature in the dormitory car in excess of 110 degrees.

Claimants, on the days involved in this dispute, were forced to set-up the entire night because of a failure in the air conditioning system which rendered it impracticable from a health standpoint that they even attempt sleeping in the air-tight hot-box designated by the Carrier as their sleeping accommodations. Upon failure of the Carrier to carry their time con-

Petitioning Organization has tried this same case unsuccessfully against another Carrier before the Third Division. Award 7879 was cited to the General Chairman in handling this case on the property. That claim was by the dining car employes on the C&EI Railroad for continuous time because the air-conditioning in their sleeping quarters was inoperative. The Board held—

Third Division Award 7870, JCDE v. C&EI, Ref. L. Smith

“Here accommodations were available. Whether or not they were ‘useable’ is questioned by the Claimants. While there is a conflict 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.**” (Emphasis ours.)

Just as the Board refused to read into the C&EI agreement a requirement that sleeping accommodations be air-conditioned, so also must it do in the instant case. The Board does not have authority to change the parties’ agreement in this respect.

In closing the Carrier respectfully requests that this claim be summarily and completely denied, for the simple reason that the agreement between the parties does not require sleeping accommodations for dining car employes aboard trains to be air-conditioned.

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All data herein and herewith submitted have been previously submitted to the Employes.

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OPINION OF BOARD: Carrier’s Train No. 1 on July 25, 1957 and Train No. 10 on July 23, 26 and 28, 1957 each carried a car equipped with sleeping accommodations for Claimant’s. On the foregoing specified dates each car’s air-conditioning system failed to function. Claimant’s allege that, because of the failure, the sleeping accommodations were not “adequate” or “usable” and they were forced to sit up between the hours of 10:00 P. M. and 6:00 A. M. They pray that “they be paid for actual time “deadheading” during those hours. The provision of the contract on which they base their claim is:

“Deadheading

“Rule 6. (a) Employes required to deadhead by order of the company shall be compensated for the actual time deadheading, computed from time of departure, except that when sleeping accommodations are not provided between the hours of 10:00 P. M. and 6:00 A. M., actual time deadheading during this period will be allowed.”

It is to be noted that the “Deadheading” provision does not define “sleeping accommodations”. Petitioner argues that “sleeping accommodations” must be interpreted to mean adequate and usable accom-

modations. Carrier replies that the provision cannot be interpreted as a guarantee against mechanical failure of the air-conditioning system in the accommodations.

We find that the Carrier cannot be held responsible for a mechanical failure of the air-conditioning system unless it is proven that the failure was due to Carrier's negligence or that after having notice of the failure it failed to remedy it within a reasonable time. The record contains no evidence of negligence. Carrier admits it was experiencing mechanical difficulties with the air-conditioning equipment in the cars; but, there is no clear and convincing evidence in the record that it unreasonably delayed remedying the difficulties. We find, therefore, that the Claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Claim should be dismissed in accordance with the Opinion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1962.