

Award No. 11063
Docket No. DC-10314

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES UNION LOCAL 372

UNION PACIFIC RAILROAD COMPANY

CLAIM NO. 1

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 372 on the property of Union Pacific Railroad Company for and on behalf of Chef F. B. Reubhausen and other employees similarly situated that they be paid three (3) additional days compensation for their tour of duty on Trains 104 and 103 beginning March 4, 1957 and ending March 8, 1957.

CLAIM NO. 2

Claim of Joint Council Dining Car Employees Local 372 on the property of Union Pacific Railroad Company for and on behalf of Chef Walter Davis and other employees similarly situated that they be paid two (2) days additional compensation account loss of layover at Omaha and Chicago and continued on comparable through assignment from Omaha to Chicago and return to Portland. Said claim being a continuing claim so long as said vacation continues.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 5, 1957, Richard W. Smith, Secretary-Treasurer of Joint Council Dining Car Employees filed notice of intention to file Ex Parte Submission within 30 days of December 5, 1957, on the claim stated as follows:

"Claim of Joint Council Dining Car Employees Local 372 on the property of the Union Pacific Railroad Company for and on behalf of Chefs F. P. Reubhausen, Walter Davis and other employees similarly situated; that they be paid three (3) additional days compensation for their tour of duty on Trains 104 and 103 beginning March 4, 1957 and ending March 8, 1957."

For convenience, said notice of intention is attached hereto as Employees' Exhibit A. On December 27, 1957, time was duly extended to February 3, 1958, within which to file Ex Parte Submission in the dispute covered in the notice of intention filed December 5, 1957 (Employees' Exhibit B). On January

rier's Exhibit E) quoted, without citing, from a part of Rule 6(g)* but did not quote the entire rule. By lifting a part of that rule from its context, the General Chairman attempted to give some support for the present claim. Rule 6(g), when read in its entirety, can furnish no support for the instant claim since by its own provisions it is applicable only to "extra employees." None of these Claimants are extra employees.

Subsequently, in the handling on the property, the General Chairman sought to premise these claims on the proposition that the manner in which these Claimants were compensated discriminated against them. Carrier's Exhibit L). These Claimants have not been discriminated against. In any event, however, the adjudication of an alleged grievance or time claim is not the proper forum to correct discriminations.

The claims should be denied.

All data used in this Response to Notice of Ex Parte Submission are of record in correspondence and/or have been discussed in conference with the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute actually involved five different dining car crews on different trains and at different times. One of the Claimant crews, composed of Chefs F. B. Ruebhausen, Vernon Stamps and Albert Simpson (hereinafter called "Chefs Ruebhausen, et al") was assigned to the cafe-lounge cars on streamliner train City of Los Angeles, trains 103-104, and the claim progressed on their behalf arose out of circumstances involved in a tour of duty which commenced on March 4, 1957. The other four Claimant crews involved in this dispute were assigned to cafe-lounge cars on streamliner train City of Portland, trains 105-106, and were composed of Chefs Walter Davis, Norman Reifsnnyder, Robert L. Bishop and Russel S. Morse, and the second and third cooks on their respective crews (hereinafter called "Chefs Davis, et al"). The situation with regard to Claimant Walter Davis and the second and third cook on his crew, arising out of circumstances involving a tour of duty which commenced on June 15, 1957, is representative of the other involved city of Portland crews and only the facts concerning that claim will be detailed. The situation with regard to the other three Claimant City of Portland Crews is similar to Chef Davis and crew.

Claimants Reubhausen, et al., left Los Angeles, California on March 4, 1957, on cafe-lounge car 5002 on train 104 and returned to Los Angeles on the same cafe-lounge car on train 103 on March 8, 1957. The assignment for this crew was between Los Angeles and Omaha, Nebraska, with one layover day at Omaha and three layover days at Los Angeles.

As assigned, cooks, positions on the cafe-lounge cars of trains 103-104 operate on what is known as an "eight day turnaround." In other words, there was a total of eight crews assigned to this particular assignment and

*Rule 6(g) provides:

"An extra employee performing service in place of a regularly assigned employee, or on a run where there is a regular assignment, shall be paid on the same basis the regularly assigned employee is paid for the same service."

every eight days a given crew commences its work on a cafe-lounge car leaving Los Angeles. The so-called eight day turnaround includes layover days both at the crew's home and away from home terminal. Detail of the assignment is shown in Bulletin 603, dated February 12, 1957, copy attached as Carrier's Exhibit A, as follows:

1st Day: Report LA Comsy 11:00 A.M. for Tr. 104
Lv. LA. 4:30 P.M.
2nd Day: En route Omaha
3rd Day: Arrive Omaha 2:30 A.M.
4th Day: Report Omaha Comsy 1:00 A.M. for stocking.
Lv. Omaha Tr. 103 at 3:10 A.M.
5th Day: Arrive LA Tr. 103 at 9:30 A.M.
6th Day: Layover
7th Day: Layover
8th Day: Layover
9th Day: Repeat.

As shown, there is a layover at Omaha for these crews from 2:30 A.M. on the third day of the schedule until 1:00 A.M. on the fourth day.

A regular dining car (Domediner) is also regularly operated on trains 103-104 between Los Angeles and Chicago, with a layover day at Chicago. (The Claimants were not assigned to the Domediner but to the Cafe-lounge car.)

As assigned, cooks' positions on the Domediner on trains 103-104 operate on what is known as an "eleven day turnaround." In this situation, there are 11 crews assigned to this particular assignment and every 11 days one of such crews commences its run on a Domediner out of Los Angeles. The 11 day turnaround includes layover days both at the crew's home and away from home terminal. Detail of this assignment is shown in Bulletin No. 566, dated June 7, 1955.

1st Day: Report LA Comey 11:00 A.M. for Tr. 104
lvg. LA 4:30 P.M.
2nd Day: En route Tr. 104
3rd Day: Arrive Chicago 10:30 A.M.
4th Day: Report C&NW Yds 2:30 P.M. for Tr. 103
lvg. Chicago 7:15 P.M.
5th Day: En Route Train 103
6th Day: Arrive LA 9:30 A.M.
7th Day: Layover
8th Day: Layover
9th Day: Layover
10th Day: Layover
11th Day: Layover
12th Day: Repeat

It will be noted that there is a layover day in Chicago for these crews from 10:30 A.M. on the third day of the schedule until 2:30 P.M. on the fourth day.

On March 4, 1957, Chefs Reubhausen, et al., left Los Angeles in service on the cafe-lounge car on train 104. This crew was due in Omaha at 2:30 A.M.

on March 6, 1957 and would have, under their assignment, layed over at Omaha until 1:00 A. M. on March 7, 1957 (4th day) when they were scheduled to leave Omaha, westbound, on train 103. It was determined that the lounge car on which Chefs Reubhausen, et al were working should proceed to Chicago. The crew arrived in Chicago on the morning of March 6, 1957 (3rd day) and left Chicago on the cafe-lounge car on westbound train 103 in the afternoon of the same day. This train was late into Los Angeles on March 8, 1957 (5th day) and the crew was required to serve an extra meal for which they were compensated an extra half day's pay.

Rule 6 of the controlling Cook's Agreement effective September 1, 1949, covers "Extra Compensation." Paragraph (d) of Rule 6 provides for the manner in which employes who are used in service out of their home or away from home terminal on their scheduled layover is days shall be compensated. Such provision is controlling in the case of Chefs Reubhausen, et al.

Rule 6(d) provides:

"Employees used for service out of home or away from home terminal on scheduled layover days will be paid on basis of additional day at daily rate of the assignment for each layover day lost. Where a part of layover day is lost, employe will be paid on the basis of additional half day for one meal period and one additional day for two or more meal periods in one day. Employees used for service on scheduled layover will start new layover at expiration of number of road days or part thereof, to correspond with regular assignment; for example, crew assigned to a run requiring four days to complete schedule, with two work days and two days home terminal layover, required to double on the third day, will start earning next layover on that day."

Such payment, which is not in dispute, is provided for in Rule 6(c) of the Agreement, effective September 1, 1949, reading:

"Where delays to trains require the serving of an extra meal or meals, additional time at pro-rata rates will be paid for on the following basis:

"1 extra meal	1/2 day
2 or more extra meals within one day	1 day."

Chefs Reubhausen, et al, have been paid as follows for the turnaround commencing March 4, 1957 and ending March 11, 1957:

- "8 days pay for turnaround
- 1/2 day's pay for serving one extra meal on March 8, 1957
- 1 day's pay for performing service on scheduled layover day at Omaha.
- 1 day's pay for layover earned by the additional work between Omaha and Chicago.

The Organization asserted, by a claim filed on April 4, 1957, that the above payments were not sufficient and that the Claimant crew (Chefs Reubhausen, et al) should be

" * * * paid and operate on the same schedule previously in effect for a run between Los Angeles, California, and Chicago,

Illinois, including doubles due to their not having been allowed away from home terminal layover. * * * "

Claimant Davis and his crew left Portland, Oregon on June 15, 1957, on a cafe-lounge car on train 106 and returned to Portland on the same cafe-lounge car on train 105 on June 19, 1957. The assignment for this crew was between Portland and Omaha, Nebraska, with one layover day at Omaha and three layover days at Portland.

As assigned, cooks' positions on the cafe-lounge cars of trains 105-106 operate on what is know as an eight day turnaround. In other words, there are a total of eight crews assigned to this particular assignment and every eight days a given crew commences its work on a cafe-lounge car leaving Portland. The so-called eight day turnaround includes layover days both at the crew's home and away from home terminal. Detail of the assignment is shown in Bulletin No. 144, dated May 16, 1957, copy attached as Carrier's Exhibit Q (P. 78) as follows:

1st Day: Report Albina 11:30 A. M.
Leave Portland Tr. 106 at 5:00 P. M.
2nd Day: En route
3rd Day: Arrive Omaha Tr. 106 at 3:05 A. M. C. T.
4th Day: Report Union Station 12:10 A. M. C. T.
Leave Omaha Tr. 105 at 1:10 A. M. and
En route
5th Day: Arrive Portland Tr. 105 at 7:30 A. M.
6th Day: Layover
7th Day: Layover
8th Day: Layover
9th Day: Repeat

As shown, there is a layover at Omaha for these crews from 3:05 A. M. on the 3rd day of the schedule until 12:10 A. M. on the 4th day.

A regular dining car (Domeliner) is also regularly operated on trains 105-106 between Portland and Chicago, with a layover day at Chicago. (The Claimants were not assigned to the Domeliner but to the cafe-lounge car.)

As assigned, cooks' position on the Domediner on trains 105-106 operate on what is known as an eleven day turnaround. In this situation there are 11 crews assigned to this particular assignment and every 11 days of such crews commences its run on a Domediner out of Portland. The 11 day turnaround includes layover days both at the crew's home and away from home terminal. Details of this assignment is shown in Bulletin No. 142, dated January 18, 1957..

1st Day: Report Albina Shops 11:30 A. M.
Leave Portland Tr. 106 at 5:00 P. M.
2nd Day: En route
3rd Day: Arrive Chicago 11:30 A. M.
4th Day: Report 11:00 A. M.
Leave Chicago Tr. 105 at 4:45 P. M.
5th Day: En route Tr. 105
6th Day: Arrive Portland 7:30 A. M.
7th Day: Layover
8th Day: Layover
9th Day: Layover
10th Day: Layover
11th Day: Layover

It will be noted that there is a layover day at Chicago for these crews from 11:30 A. M. on the 3rd day of the schedule until 11:00 A. M. on the 4th day.

On June 15, 1957, Chef Davis and his crew left Portland in service on the cafe-lounge car on train 106. This crew was due in Omaha at 3:05 A. M. on June 17, 1957 (3rd day of turnaround, see detail 9, supra) and would have, under their assignment, layed over at Omaha until 12:10 A. M. on June 18, 1957 (4th day) when they left Omaha, westbound, on train 105. It was determined that the cafe-lounge car on which Chef Davis and his crew were working should proceed on train 106 to Chicago. The crew arrived in Chicago on the morning of June 17, 1957 (3rd day) and left Chicago on the cafe-lounge car on westbound train 105 in the afternoon of the same day. This train arrived in Portland on June 19, 1957 (5th day).

Rule 6 of the controlling Cooks' Agreement, effective September 1, 1949, covers Extra Compensation. Paragraph (d) of Rule 6, quoted at page 51 supra, provides for the manner in which employees who are used in service out of their home or away from home terminal on their scheduled layover days shall be compensated.

Chef Davis and his crew have been paid as follows for the turnaround commencing June 15, 1957, and ending June 22, 1957 (8th day):

- 8 days pay for turnaround
- 1 day's pay for performing service on scheduled layover day at Omaha
- 1 day's pay for layover earned by the additional work between Omaha and Chicago.

The Organization asserted, by a claim filed on August 20, 1957, that the above payments were not sufficient and that the Claimant crew (Chef Davis, et al) should be paid—

" * * * two days' additional pay account continuing through from Omaha to Chicago and doubling out of Chicago same day of arrival and returning to Portland on assignment which was established by Carrier between Portland, Omaha and return."

We are of the opinion that Rule 6(b) and 7 are not applicable. Claimants are not extra employees and Rule 6(b) is applicable to extra employees only.

We also believe that under Rule 6(d) Claimants were properly compensated. We would point out that this Board cannot consider equity, but only confines itself to interpret the Agreement.

For the foregoing reasons, we find the Agreement was not violated.

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 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 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 24th day of January, 1963.