

Award No. 11232

Docket No. DC-10730

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES UNION, LOCAL 372

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Time claim of Joint Council Dining Car Employees Union Local 372 on the property of the Union Pacific Railroad Company for and on behalf of Russell S. Morse, Chef, Herman Butler, Second Cook and Calvin Koch, Third Cook for one day's pay account extra trip Chicago and return March 6, 1958, returning Portland March 10, 1958 on Cafe Lounge Car No. 5008.

EMPLOYEES' STATEMENT OF FACTS: On April 5, 1958, Organization submitted the foregoing time claim to Carrier (Employees' Exhibit A). Carrier's Superintendent Portland Division denied the claim on April 8, 1958, (Employees' Exhibit B). On April 10, 1958, Organization appealed the claim to Carrier's Manager Dining Car and Hotel Department, the highest officer on the property to consider such appeals (Employees' Exhibit C). On April 21, Carrier's Manager of Dining Cars and Hotel Department replied, conceding that Paragraph (g) and (h) of Rule 6 applied to the claim but denied the claim (Employees' Exhibit D). On April 24, 1958, Organization replied correcting a misunderstanding implicit in Carrier's letter of April 21, (Employees' Exhibit E). On April 29, 1958, Carrier's Manager Dining Cars and Hotel Department replied to Organization explaining that claimants were paid an additional day layover in Portland and further declined the claim (Employees' Exhibit F). On May 2, 1958, Organization pointed out that claimants were not paid for additional layover time in Portland and explained the basis upon which they were paid (Employees' Exhibit G). The claim was finally declined by Carrier on May 5, 1958 (Employees' Exhibit H).

POSITION OF EMPLOYEES: Organization contends that Rule 6(g) and (h) of the current agreement between the parties are applicable to and control the disposition of the issue in this docket. The current agreement effective June 1, 1942, is on file with this Board. It is incorporated herein by reference as though fully set out. Rule 6(g) provides:

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

Rule 6(h) provides:

Carrier has always had the right to use men in extra service as and where necessary to meet operating conditions. That is precisely the function of extra service. It is a service usually handled by those employees who do not possess sufficient seniority to hold down a regular assignment.

This is the essence of the seniority system. Those with the higher seniority can bid in on an assignment of their choice so they will know when they will work, where, for what compensation, and barring operational mishaps, when they can expect to be home, etc. These matters are all spelled out in the assignment bulletin and constitute the terms of the assignment.

On the other hand, extra service by its very nature can make no such commitments and, therefore, generally is less desirable and usually handled by junior employees. Extra service exists to provide for contingencies of the service which cannot be assigned because they are not regular occurrences. Obviously, by definition extra service must be flexible, with Carrier preserving the right to make any adjustments or changes required by the circumstances.

Accordingly, it should be clear that the moving of the layover day from Chicago to Portland was a simple operational adjustment made in extra service. The claimants lost no compensation whatever as a result of what occurred, and were granted the layover day at Portland.

The claim 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: The Carrier in its operations between Portland, Oregon and Chicago on its train the City of Portland maintained a dome-liner dining car. In order to accommodate a group travelling between Chicago and Sun Valley, the Carrier added as extra equipment a Cafe Lounge Car.

The Claimants were paid eleven days for this service, plus another day and one-half for service at Portland in connection with the run. This claim is for an additional day when the crew was used out of Chicago.

In order to provide the extra service, *supra*, the Carrier moved the Cafe Lounge Car from Portland to Chicago, the Claimants reported for duty on March 5th at Portland and worked in terminal stocking the car. They departed Portland on March 6. The crew arrived in Chicago on March 8 at 11:30 A. M. and left Chicago on the 8th at 4:45 P. M. returning to Portland on March 10 at 7:30 A. M.

The claim for additional pay is for additional layover in Chicago.

It may be well to point out that the Claimants herein worked with two regular crews between Portland and Chicago and Chicago and Portland. The regular assigned employees did not double back on March 8th, they observed their scheduled layover in Chicago.

The Organization relies on Rule 6(d), (h) and (g) in support of their position.

“(d) 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. Employes 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.

* * * * *

“(g) An extra employe performing service in place of a regularly assigned employe, or on a run where there is a regular assignment, shall be paid on the same basis the regularly assigned employe is paid for the same service.

“(h) An extra employe performing service on other than a regular assignment, shall be paid on a basis of corresponding regular assignments.”

We cannot find any support in Claimant's contention with respect to the rules upon which they rely.

It is our opinion that Claimants did not lose anything, under the Agreement as extra employes, they were not entitled to a scheduled layover, thus having nothing in this respect, they lost nothing.

Regular assigned employes work pursuant to the terms of a bulletin and under the bulletin, scheduled layovers are created or designated. Extra employes do not work under a bulletin for they are not regularly assigned.

It is our opinion that these Claimants have been properly compensated pursuant to the provisions of Rule 6(h) and (g).

The record reveals further that the Claimants were compensated for six layover days at Portland and none in Chicago, while the regular crew has one day in Chicago and five at Portland. They returned to the Home terminal a day earlier than the corresponding regular assignment, they received the same compensation as the regular assigned employes, i.e., eleven days, thus they have suffered no lost layover days (assuming they were entitled to one) thus they have failed to comply with Section (d) which would entitle them to recover for an extra day.

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.

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AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 15th day of March 1963.