

**Award No. 11596**

**Docket No. DC-10821**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Arthur Stark, Referee**

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**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 370**

**THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employees Union Local 370 on the property of the New York, New Haven and Hartford Railroad Company for and on behalf of Cook Mobie Barker that he be compensated for 8 hours pay at his regular rate of pay for dead-heading time Boston to New York, Wednesday June 12, 1957, and for and on behalf of Cook Mack Kaster or any other person similarly situated for 16 hours pay Train 108 Friday, June 14, 1957, and dead-head time to home terminal New York for employees in extra service, account Carrier designating home terminal of said run in violation of agreement.

**EMPLOYES' STATEMENT OF FACTS:** Organization's General Chairman lodged the foregoing stated time claim with Carrier under date of June 27, 1957 (Employees' Exhibit A). Under date of July 10, 1957, Carrier's Superintendent Dining Cars declined the claim (Employees' Exhibit B).

Denial of the claim by Carrier's Superintendent Dining Cars was appealed to Carrier's Director Labor Relations, the highest officer designated on the property to consider such appeals under date of August 6, 1957 (Employees' Exhibit C). Thereafter the title of the incumbent in the position of Director of Labor Relations and personnel was changed to Vice President Labor Relations with no change in the function of the office so far as being the highest operating officer on the property designated to consider such appeals. On February 6, 1958, seven months after the appeal was lodged, that officer denied the claim (Employees' Exhibit D).

The facts in the instant claim are relatively simple. The instant claim involves the issue of whether Carrier can establish home terminals for runs at any point it desires without regard to operational facts and past practices not changed by the agreement. The train involved in the instant claim, No. 108, is a Friday only train, New York to Hyannis, Massachusetts. Train No. 107 is a Sunday only train, Hyannis and/or Woods Hole to New York.

The claim on behalf of Cook Barker arises from the fact that it was necessary for that claimant to dead-head from Boston to New York, Wednesday, June 12, 1957, in order to make assignment Train 108 New York to Hyannis, Massachusetts, and return. In handling on the property, Carrier has denied

The entire claim is without merit; Carrier respectfully requests that it be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On June 7, 1957 Carrier bulletined an assignment (to become effective June 14) with Hyannis, Massachusetts as home terminal. The working example indicated the following weekly schedule:

Day	Train	
Sunday	107	Hyannis — New York
Monday	28	New York — Boston
Tuesday	13	Boston — New York
Wednesday	28	New York — Boston
Thursday	13	Boston — New York
Friday	108	New York — Hyannis
Saturday		Relief

On Wednesday, June 12, 1957 Claimant Barker (then holding a regular assignment with home terminal Boston) was the successful bidder for the 1st Counterman position. On that day he deadheaded from Boston to New York in order to be present for the Friday New York — Hyannis run on Train 108. His claim is for eight hours' pay covering this trip.

Rule 12 provides in part that

"An employe acquiring a position in the exercise of bidding or displacement will do so without expense to the Company."

This rule applies to Barker, who exercised his bidding rights to obtain the new assignment. Petitioner states in its claim, however, that Barker's request for additional compensation is based on "Carrier designating home terminal of said run in violation of agreement". It argues that (1) the home terminal really was New York since the first run of the season starts there and the last run (in September) ends there; (2) the home terminal of this run "pursuant to past practice and as the parties have interpreted and agreed" was New York.

We can find no rule or provision in the Agreement which limits Carrier's right to determine where a home terminal shall be located. As a matter of fact, in a prior Award on this property involving the same Organization, where it was claimed that the Carrier could only establish home terminals at Boston and New York, the Board held that such contention "is not supported by any rule or practice brought to the Board's attention . . ." (Award 11254). In the case at hand Petitioner has failed to present evidence substantiating its past practice allegation.

As for Claimant Kaster, the Organization states that

"he had to travel from New York to Hyannis dead-head and lay-over at Hyannis to cover the assignment of an employe who bid on the job but who did not pick it up on June 14, 1957."

However, no proof to support this allegation appears in the docket and there is no evidence that Kaster even worked Train 108 on the date in question. (Carrier, as a matter of fact, offers evidence to the contrary.) Under the circumstances this claim must be denied.

**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 there is no evidence of Agreement violation.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1963.