Award No. 12228
Docket No. DC-12215

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES
(Local 372)

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Local 372 on the property of the Union Pacific Railroad Company for and on behalf of Chef-Caterers Harry C. Moss and F. Paul Reubhausen; 2nd Cooks Dale Buckley and Langston Gardner; 3rd Cooks John Stranglen, James Walker, and Lloyd A. King; and 4th Cooks Marion Jones, Jr., Charles E. Brooks, Tonty Cortese, and Adolph Caldwell, and all other employes similarly situated, including, but not limited to, the employes' names in Exhibit A attached hereto, that:

1. Claimants be compensated retroactively since June 1, 1959 in accordance with the established Group AA rates of pay as set forth in Article 11, Rule 2, of the agreement, for all hours worked by claimants on Carrier's Trains 107 and 108.

2. Claimants be further compensated retroactively since June 1, 1959 at Group AA rates of pay on the basis of an eleven crew line.

EMPLOYES' STATEMENT OF FACTS: On June 1, 1959, Carrier placed in service between Los Angeles, California–Chicago, Illinois, and return, Trains Nos. 107 and 108, as second section of Trains Nos. 103 and 104, The Challenger. Crews assigned to Trains Nos. 107 and 108 were assigned on the basis of a ten (10) crew line, although these employes operated over the same territory consuming practically the same amount of time as the crews assigned to Carrier's "City of Los Angeles", who were, and are, assigned on an eleven (11) crew basis.

In addition, employes assigned to Trains 103 and 104 are compensated in accordance with the established Group "AA" rates of pay as set forth in Article 11, Rule 2, of the agreement, hereinafter set out in full, while claimants were compensated on the basis of Group B of said Rule.

Organization filed time claim on behalf of the affected employes under date of July 16, 1959, for compensation in accordance with Group "AA" rates

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In connection with changes in the operation of its passenger trains for the summer of 1959, Carrier decided to adjust its dining-room car assignments. Representatives of Carrier and Organization held a meeting on April 11, 1959, and on that day the General Chairman wrote a letter to Carrier indicating his interpretation of the understanding reached at the meeting as to crew assignments for Carrier's five dining car districts under the new train schedules to be placed into effect in the summer of 1959. On June 1, 1959, Carrier placed in service between Los Angeles and Chicago and return Train Nos. 107 and 108, the Challenger, with a 10 crew line.

Claim is made for compensation in accordance with Group "AA" rate of pay on the basis of an 11 crew line. Organization points out that a 10 line crew was assigned to the Challenger, although on the City of Los Angeles, which operates over the same territory and consumes practically the same amount of time, an 11 man crew was in service and paid Group "AA" rates. It argues, therefore, that the employes on the Challenger crew are entitled to be paid in accordance with the provisions of Rule 6, Paragraphs G and H of the Agreement.

Carrier denies the claim on the grounds that the joint conference, as confirmed by Organization's letter of April 11, 1959, resulted in an understanding to use a 10 man crew on the Challenger. Moreover, it asserts that the crew is paid on the basis of Group "AA" rates. It also submits that Rule 6 is not applicable because the crew members are regular employes.

We find, as Carrier maintains, that Rule 6 is not pertinent in this dispute because it concerns extra employes, whereas the crew on the Challenger is assigned as regular employes. We are also satisfied from the record that the crew does receive Group "AA" rate of pay.

In the referee hearing Organization argued that Carrier violated Rule 7 which provides that the hours and number of crews to be assigned to runs be agreed upon by mutual consent and that in the re-assignment of crews the same relatively favorable layovers be maintained. We are of the opinion that this rule is not pertinent, because it concerns re-assignment. In the instant case, there is no showing of re-assignment. We regard the assignment to the Challenger as a new job, for that train had not been in service for five years. Furthermore, we note that when the Challenger had been in operation, it employed a 10 man crew.

As for Organization's contention that there was also a violation of that portion of Rule 7 which provides for mutual agreement in assigning crews, we have already pointed out that a conference was held which resulted in an understanding. The understanding confirmed by Organization in its letter to Carrier, dated April 11, 1959, is interpreted by Organization as a decision for an 11 man crew. Carrier, on the other hand, interprets the decision to be for a 10 man line crew. We find that the letter is evidence that an agreement between the parties was arrived at, even though later the terms of this understanding were conceived differently by the parties. Hence, there was no violation of the rule.

In the absence of Petitioner's showing wherein Carrier violated any rule of the Agreement, the 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 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 of the parties 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 20th day of February 1964.