

Award No. 12339
Docket No. DC-12299

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the United Transport Service Employees, Local 320, on the property of the Baltimore and Ohio Railroad Company, for and on behalf of William Kegler, that he be paid the pro rata hourly rate of his position for six hours and forty-five minutes time while laying over at Cincinnati on October 24, 1959 due to Carrier's failure to provide sleeping accommodations between time of arrival and the scheduled reporting time the following morning, as provided in the authorities cited herein.

EMPLOYEES' STATEMENT OF FACTS: On the night of October 24, 1959, car 1056 arrived at Cincinnati, Ohio on a Special Train from Louisville, Ky. at approximately 11:15 P.M. Walter Kegler, claimant herein, upon completion of his duties, received a lodging slip from the steward for the purpose of authorizing payment for a night's accommodations at the Y.M.C.A. located at 630 West 9th Street, Cincinnati, Ohio. He left the property shortly after arrival and proceeded to town. He stopped off at a restaurant for something to eat and it was not until 1:30 A.M. that he arrived at the Y.M.C.A. to register. Upon his arrival at the Y.M.C.A., he was informed that there were no accommodations available and claimant, upon notification of this, returned immediately to the station. He sat up in the men's room of the station until 6:00 A.M. that morning at which time he reported for duty.

Under date of November 23, 1959, claimant's organization filed claim on his behalf for continuous time at the pro rata rate. See Exhibit B. Under date of November 25, 1959, the manager of the Dining Car Department, in correspondence to the organization, denied the claim. See Exhibit C. On January 13, 1960, the organization appealed the decision of the manager of the Dining Car Department to the highest officer of the Carrier to whom such appeals are to be made. See Exhibit D. That officer, in turn, reiterated the carrier's denial of the claim as set forth in his letter to the organization dated February 17, 1960. See Exhibit E.

POSITION OF EMPLOYEES: The employees' position is basically supported by Circular 15, dated December 16, 1957, subject: "Working Schedule No. 117-Rev.", and attached hereto. See Exhibit A. The fifth paragraph on page one of this document sets forth a directive to all dining car and com-

expense each member of the crew was required to pay to obtain sleeping accommodations for himself.

Under the facts in this record, this crew did not obtain any sleeping quarters. The claim for damage for loss of sleep or rest is too speculative to be considered as an element of damage sustained by the Carrier's breach of the contract." (Emphasis ours.)

Where, as here, this Carrier has no agreement rule, practice, letter agreement or commitment to the committee to provide sleeping accommodations, there is no reason why the same doctrine as to damages should not apply. There is no basis for the claim made under any phase of the rules agreement; there is no basis for any claim for punitive damages.

(7) There is no merit to the claim as made.

Under any circumstances the Carrier asserts it satisfied all the obligations, if any, it may have had under its practice of furnishing lodging slips to employes laying overnight at points other than home terminals where this Company does not maintain quarters. The Carrier made all necessary arrangements to secure accommodations for the claimant and the other two waiters. Once the lodging slips had been furnished and the reservations made, the means and method for securing the accommodations were wholly out of its hands. It had no way whatever of knowing that the claimant was not going to appear at the specified hostelry until 1:30 A.M. on October 25. The means for the claimant securing accommodations was at that time wholly out of the hands of the Carrier. The Carrier had no control whatever of the situation. It had taken all the steps it could conceivably or possibly have taken to insure that the claimant would obtain sleeping quarters. Certainly, any obligation it may have had in this whole proposition had been fully acquitted.

On the basis of the factual showing in this case and in the absence of any rule or practice the Carrier asserts that the claim made here at all its parts is essentially without merit and respectfully requests this Division to deny it.

OPINION OF BOARD: Claimant, William Kegler, who was assigned as waiter on Dining Car 1056, arrived at Cincinnati, Ohio, on a Special train from Louisville, Kentucky at about 11:15 P.M. on October 24, 1959. He received a lodging slip authorizing payment for a night's accommodation at the YMCA. When he arrived at the YMCA at 1:30 A.M., he learned that the clerk not expecting him to appear at such a late hour, had disposed of his reservation. Claimant then returned to the railroad station where he remained in the men's room until reporting time at 6:00 A.M.

Mr. Kegler makes claim for compensation for six hours and forty-five minutes, time while laying over in Cincinnati, because Carrier failed to supply sleeping accommodations between the time he arrived and the scheduled reporting time.

Carrier in its denial submits that it furnished Petitioner with a reservation for sleeping accommodations which he failed to act upon at a reasonable time. Moreover, it argues that there is no rule in the Agreement which requires it to compensate an employe on a pro rata hourly rate for the time he spent without sleeping accommodations.

The record indicates that another waiter employed on the same Special train as Claimant appeared at the YMCA with his lodging slip at a reasonable

time after 11:15 P.M. and obtained the accommodations which Carrier had reserved for him. Carrier had made the same arrangement for Claimant, who, however, did not appear at the YMCA until the late hour of 1:30 A.M. Between the time that the train arrived at Cincinnati at 11:15 P.M. and 1:30 A.M. when he appeared to claim his reservation, he made no effort to notify the YMCA that he would be detained and that he desired the clerk to hold the room for him. Moreover, after he learned that his reservation was no longer available, he made no effort to secure lodging by himself or with the assistance of the Dining Car Supervision.

We are satisfied that Carrier exercised proper care in making arrangements for lodging for Claimant. The late hour at which he arrived at the YMCA, long after his fellow waiter registered, accounts for his loss of the reservation. This dilatory action and his failure to use ordinary diligence to obtain other lodgings were not the fault of Carrier and hence cannot be made the basis for the reparations he seeks.

In examining the Agreement, we find that Claimant was properly compensated under Article 6 (a) for continuous time up until 11:15 P.M. when he was released from duty and put on rest until 6:00 A.M. Since he was not deadheading, Article 11 (a) is not applicable. As in Award No. 7476, we hold that the Agreement was not violated and request for payment for time while allegedly laying over in Cincinnati is 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

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 13th day of March 1964.