

Award No. 13015
Docket No. DC-14528

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Local 351 on the property of the Atchison, Topeka and Santa Fe Railroad Company, for and on behalf of Oscar Brooks, W. B. Clay, Richard Ellis, C. Boudreaux and P. Jackson, second cooks assigned to Carrier's train No. 15, that Carrier be ordered to pay claimants for two (2) hours, over and above time received on said assignment, for each day claimants are required to report for train No. 15 at Chicago, Illinois, at 4:30 P. M., instead of 2:30 P. M., said action by Carrier being in violation of the agreement between the parties hereto.

EMPLOYEES' STATEMENT OF FACTS: The instant claim was instituted via the following letter of protest:

"March 20, 1963

Mr. R. T. Hillyard
Superintendent Dining Cars
AT&SF Railway Company
2014 S. Wentworth Avenue
Chicago 16, Illinois

Dear Sir:

This to advise your company has arbitrarily set up conditions of assignment for consist of trains 15-16 operating between Chicago, Illinois-Houston, Texas, and return, contrary to the language of the current agreement existing between this union and the AT&SF Dining Car Department. Consist of kitchen crews as provided for in the current agreement between this union and the AT&SF Dining Car Department, is as follows:

PERSONNEL OF KITCHEN CREWS

For Classes, A, B, and F, kitchen crews shall be rated as follows:

We view the date of filing claim, June 23, 1951, as the controlling date on payments for the violation. To sustain the prior date, April 17, 1950, as requested in (2) of the claim would be to set up a precedent which might permit serious abuses in the payment of like claims to any date retroactively going back to the alleged inception of the violation. The parties are familiar with the procedure as provided in the Railway Labor Act for the filing of claims. Failure to follow the procedure in the filing must defeat the request for payment back to April 17, 1950. See Awards 2852, 4281, 4282, 4428, 4437, 4964, 4966 and 5098."

The Third Division has in other awards also repeatedly held in sustaining claims for alleged violations of agreements that the penalties claimed should be restricted to the date the claim was first presented to the Carrier in instances where the employees and their representatives offered no protest or claim and thereby acquiesced, as did the Petitioner in the instant dispute, in the handling that was later complained of. Awards Nos. 3430, 3503, 5526, 6494, 7106 and others.

The Employees' claim for penalties is also excessive in that it contemplates the payment of all or a portion of the additional hours claimed at time and one-half rates, and disregards the well established principle so often enunciated by the Third Division, that the right to work is not the equivalent of time worked under the overtime and call rules of an agreement. Third Division Awards Nos. 4645, 4934, 6544, 6670, 6750, 6853, 7242 and many others.

In conclusion, the Carrier respectfully reasserts that the Employees' claim in the instant dispute is wholly without support under the rules of the governing Dining Car Employees' Agreement and should be either denied or dismissed for the reasons stated herein.

OPINION OF BOARD: This claim arises by reason of Carrier's regularly requiring a chef and third cook to report for train No. 15 at Chicago, Illinois at 2:30 P. M. for purposes of stocking cars while requiring a second cook to report just prior to departure or at 5:00 P. M. Employees contend that the consist of kitchen crews provision of the current Agreement requires Carrier to use a chef and second cook from the earlier reporting time.

Carrier points out that a three man kitchen crew of chef, second cook and third cook, serves from train departure and thereafter, thereby satisfying all of the requirements of the consist of kitchen crews provision. It points out however, that under the circumstances the reporting time of the second cook is delayed until just before departure in order to prevent such second cooks' work month from extending to within the punitive or overtime rate period. It is undenied that such second cook, under the assignment complained of, receives more than the 205 hours work guaranteed each month. It is also undenied that he would average approximately 253 hours work if he reported at the earlier time, at least a part of which would require compensation at punitive or overtime rates. Carrier contends that it is authorized to require the second cook to report at a later time prior to departure under Article III, Section 2 (c) of the Agreement which provides:

"The right of the Company to rearrange assignments at any time to comprehend a full basic month's work or to avoid punitive overtime payments is recognized."

From an examination of the record, it appears that the rearrangement of the second cook's reporting time to just prior to departure was for the purpose of avoiding punitive overtime payments. The above quoted rule would appear to authorize such action by the Carrier under the circumstances involved herein. For this reason, the claim must be 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

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 27th day of October 1964.