

Award No. 13071

Docket No. DC-14596

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Local 849 on the property of the Chicago, Rock Island and Pacific Railroad Company for and on behalf of Lawrence T. Dozier, Bishop Craig, Eugene Hurley, C. C. Davis, Jessie Jones, John Aaron, Roscoe Gillum, Laydell High, and all other employees assigned to Carrier's Trains 5-10 on June 7, 1963, that claimants be paid for time between 9:30 P.M. and the arrival of Trains 5-10 at Des Moines, Iowa, account of Carrier discontinuing claimants' time prior to arrival at this point in violation of the Agreement between the parties.

EMPLOYEES' STATEMENT OF FACTS: Claimants were and are assigned to Carrier's Trains 5-10, Chicago, Illinois to Des Moines, Iowa, and return. Schedule setting forth this assignment, attached hereto as Employees' Exhibit A, provides that claimants' time be carried 9:30 P.M., en route Des Moines, although the arrival time of Train 5 at Des Moines is 12:15 A.M. Employees filed time claim on behalf of persons assigned to the train in question, as indicated in Carrier's "Corrected Assignment" (Employees' Exhibit B), on June 21, 1963, directed to Carrier's General Superintendent Dining and Sleeping Car Department, claiming pay from the time claimants were required to report and did report until arrival at the Des Moines terminal. (Employees' Exhibit C.)

Carrier in letters dated June 28 and July 2, 1963, denied the claim, contending that, it had the right to cut claimants' time prior to arrival of Train No. 5 at Des Moines under Rule 2, paragraph 6 (c) of the Agreement between the parties. (Employees' Exhibits D and E.) Carrier in its June 28, 1963 letter further took exception to the manner in which the claim was filed, that is to say, since only one of the claimants named in the time claim and reflected on Carrier's "Corrected Assignment" dated June 7, 1963, (Employees' Exhibits B and C) was assigned to the train on June 7, 1963, Employees' "claim in behalf of the other named employees (had) not been submitted properly."

Under date of July 12, 1963, Employees' again wrote Carrier's General Superintendent Dining and Sleeping Cars, reminding Carrier that the claim

OPINION OF BOARD: This claim arises because a number of dining car employes assigned to Trains 5-10 between June 6 and 10, 1963, were assigned rest times beginning at 9:30 P.M. while their trains were en route; Organization argues that rest periods could not be properly assigned to start under Rule 2 (b) except at such time as the employes reached a layover, set-out, or terminal point.

Carrier contends: 1. That the claim was improperly filed and should, for that reason, be judged valueless and be denied; 2. That no violation of the Agreement was involved in the setting of the time of the rest period.

Rule 2 (b) includes the following phrase: ". . . or where rest periods are provided under Rule 2. . . ." which phrase can have no sensible meaning ascribed to it other than that it designates another time and place at which time allowances may be cut-off; the exception following the quoted phrase is merely an exception to that phrase and to no other part of the rule. In the light of this and of the failure of the Organization to present any evidence of a practice under the rule differing from this reading, we will deny the claim on its merits; it will not be necessary, therefore, to discuss and dispose on its merits of the procedural defense set forth by the Carrier.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1964.