

Award No. 13297
Docket No. DC-14458

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: The question involved is the right of the waiter-in-charge and five crew members on Train No. 1 from Baltimore to St. Louis on January 5, 1963 and the right of the waiter-in-charge and five crew members on Train No. 2 on January 7, 1963 to be paid from 10:00 P. M. to 6:00 A. M. because of failure of carrier to furnish sanitary and proper sleeping quarters. The claim is for eight (8) hours pay from 10:00 P. M. to 6:00 A. M. for six employes on each of said two dates.

The carrier has disputed the claim on the grounds that the furnishings of filthy mattresses was not a failure to furnish sanitary and proper sleeping accommodations and on the further ground that the failure of the first waiter-in-charge to notify the carrier before the train left Baltimore is a defense to the claim.

EMPLOYEES' STATEMENT OF FACTS: On January 5, 1963, five crew members named L. A. Nunnelly, Rufus Oakley, William O. Burley, Clarence Pressley and Clayton H. Johnson and waiter-in-charge W. J. Owens, were working on Train No. 1 between Baltimore and St. Louis. On that date the crew and the waiter-in-charge were transferred to Car 1239 for the first time. Since the mattresses on Car 1239 were wholly unsanitary, the crew members were unable to use the sleeping quarters and the carrier became obligated to the waiter-in-charge and the five crew members whose names are listed above for the hours from 10:00 P. M. to 6:00 A. M., when the sleeping quarters were unavailable. On the return trip from St. Louis to Baltimore, the same condition prevailed, except that a different waiter-in-charge was working. The new waiter-in-charge was Robert Brown. This was on Train No. 2 from St. Louis to Baltimore on January 7, 1963.

The crew members and the waiter-in-charge turned in time slips to the carrier claiming time for the entire crew on account of absence of sleeping accommodations.

On January 11, 1963, J. B. Martin, manager in Baltimore of the Dining Car and Commissary Department wrote to waiter-in-charge W. J. Owens admitting that the mattress covers were more soiled than normally and

because of the employee's failure to utilize them. This Board in Award 7476 held in part that:

" * * * The lack of diligence and foresight was unwarranted and cannot be made the basis for granting the reparation sought."

Again in this Division's Award No. 9809 this Board with Referee McMahon participating denied the claim of Joint Council Dining Car Employees Local 849 v. Chicago, Rock Island and Pacific Railroad Company, recognizing that once having complied with the rules as to providing sleeping accommodations the Carrier could not further be held responsible if its employees failed to use them by reason of improper functioning of the air conditioning unit.

In a word, both Awards rendered by this Division clearly recognize the extent of the Carrier's responsibility when providing sleeping accommodations.

CARRIER'S SUMMARY: The carrier submits that the claim in this case is wholly without merit. The Carrier respectfully requests that this Division so hold and this claim be declined in its entirety.

OPINION OF BOARD: This simply is a case where the Claimants are asking for additional compensation because their sleeping quarters were, as they allege, unsanitary. The Carrier is required to furnish these quarters in accordance with applicable rules of the Agreement.

The record is not clear as to whether the mattress cover or the mattress itself was soiled, but we find this immaterial. It is agreed by both parties that either the cover or mattress were in fact soiled. The basic point of disagreement is whether the soiled mattresses or covers were so bad that reasonably prudent men would refuse to use them.

The record is also not clear as to whether the sleeping car itself had been used the day before or had been on the tracks unused and unattended for several days. Regardless of the truth, the Carrier had a responsibility to inspect the Condition of this Car. It is true that the language of the rule states only that sleeping accommodations will be furnished. It does not say proper accommodations. It does not say sanitary accommodations. However, as the Organization's representative stated in the panel discussion, human consideration dictates that these quarters be proper and by that we mean sanitary. Reasonable men would certainly imply as much.

Although the Carrier did have the basic responsibility of inspection, the Waiter-in-Charge Owens, likewise had the responsibility to inspect and report his findings to the appropriate personnel for correction. This, he failed to do. We cannot award him for his inefficiency. He does not come into this case with "clean hands."

When the train arrived in Cincinnati from Baltimore, the situation could not be rectified, since that station did not have the required equipment. The Waiter-in-Charge Owens was replaced on the return trip to Baltimore by Waiter-in-Charge Brown. We are unable to subscribe to the proposition that Brown should be denied his claim because of the lack of diligence of Owens. We therefore will deny the claim insofar as Owens is concerned and sustain all other claims including Brown's.

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 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 violated as stated in opinion.

AWARD

Claim denied for W. J. Owens.

Claim sustained for all other Claimants.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION
ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February, 1965.