

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370
THE NEW YORK CENTRAL RAILROAD**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union, Local 370, on the property of the New York Central Railroad Company, for and on behalf of W. Peace, cook, and W. J. Everett, waiter,

that they be compensated for the hours 8:15 P.M. to 3:15 A.M., June 20th and 21st, 1965, account of Carrier's failure to provide claimants with sleeping accommodations during these hours in violation of the agreement between the parties hereto.

EMPLOYEES' STATEMENT OF FACTS: Claimants were on June 21, 1965, assigned to Carrier's Train 51, arriving Cleveland, Ohio, at 8:15 that date. After detraining, Claimants went to the crew quarters furnished by Carrier; however, there were no beds available. Claimants, as a consequence, were without sleeping accommodations for the night, reporting for duty Train 41 the following morning.

Rule 8(b) of the Agreement between the parties provides:

"Sleeping Quarters. The company shall provide quarters for employes on runs where layovers are necessary. This provision is intended to be applicable at any layover point where employes are relieved from duty and conditions are such that they require sleep during layover period." (Emphasis ours.)

Under date of July 9, 1965, Employees filed time claim on behalf of Claimants claiming pay from 8:15 P.M., June 21, 1965 until 3:15 A.M. the following morning, cited the above-quoted rule. This claim was handled to conclusion on the property in the usual and customary manner, up to and including the highest officer on the property designated by Carrier to consider such claims, each of such officers denying same. (Employees' Exhibits A, B and C.)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Rules and working conditions of dining car employes on Carrier's Eastern District are governed by an agreement effective January 1, 1942 between the New York Central Railroad, Eastern and New York Districts, excluding Boston and Albany Division, copy of which is on file with the National Railroad Adjustment Board and by reference made a part hereof.

In addition, for service performed on June 21, they were paid from 2:30 P. M. to 8:15 P. M.— 5 hours and 45 minutes.

On July 6, 1965, M. Scavarelli, Carrier's Supervisor of Personnel, received a telephone call from Dudley Washington, General Chairman, Dining Car Employees Union, Local 370, reporting that no accommodations had been provided for Claimants during their layover at Cleveland, and complaining that Carrier's local official had refused to pay them continuous time during their layover period. It was Mr. Washington's contention that the rules agreement required that employees be paid between the hours of 10:00 P. M. and 5:00 A. M. when sleeping accommodations were not provided. Mr. Scavarelli explained that the rule applied only to employees dead-heading on trains, and was not applicable in this situation.

On July 9, 1965, Ralph Patterson, Local Chairman, wrote H. C. Cassell, Asst. Supt. D&SCS, presenting claim for "continuous time for Cook W. Peace and Waiter W. J. Everett on Train 51 until these men reported for Train 41, June 21, 1965." Copy of his letter is attached hereto as Carrier's Exhibit A.

Mr. Cassell, who had discussed this matter with Mr. Patterson, wrote the Local Chairman on July 15, 1965, denying the claim as not in accordance with the rules agreement. At the same time, Mr. Cassell offered to reimburse these employees for any reasonable expense they might have incurred in securing accommodations elsewhere. Copy of his letter is attached as Carrier's Exhibit B.

On July 26, 1965, General Chairman Washington wrote A. H. Smith, Manager D&SCS, appealing Mr. Cassell's decision of July 15. Copy of his letter is attached hereto as Carrier's Exhibit C. Copy of Mr. Smith's response, dated August 3, 1965, denying the claim, is attached as Carrier's Exhibit D.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants here are W. Peace, a cook, and W. J. Everett, a waiter, in Carrier's Dining Car service, home terminal, Buffalo, New York.

On June 21, 1965, Carrier's dining car official at Buffalo was informed that a special party of 35 military personnel would travel on Train 341, Cleveland, Ohio to St. Louis, Missouri, the following day, and would require dining service.

Food service on Train 341 is provided by dining car crews operating out of Buffalo. Crews are released following arrival at Cleveland on Train 51 at 8:15 P. M., until they report for Train 341 at 3:15 A. M., the following day.

Carrier states they are customarily provided, at Carrier's expense, with sleeping accommodations at a Y.M.C.A. in Cleveland, in conformity with Rule 8(b).

It should be noted that the Rule states the Company:

" . . . shall provide quarters for employees on runs where layovers are necessary. This provision is intended to be applicable at any lay-over point where employees are relieved from duty and conditions are such that they require sleep during layover period."

It is, thus, a mandatory rule.

In the case here Carrier did not provide such quarters for the two claimants. It states that "unfortunately, no reservations had been made for these men, and accommodations were not available."

It is thus evident Carrier violated Rule 8(b).

The claim in behalf of the two claimants is that they be compensated "for the hours 8:15 P. M., June 20th to 3:15 A. M., June 21st, on a continuous time basis."

There is nothing in the applicable agreement to justify compensation on the basis sought by the Organization.

The record here indicates that Carrier notified the Organization that if Claimants Peace and Everett secured accommodations elsewhere (on the night in question) "we will be glad to reimburse them for any reasonable expense incurred in this connection."

If the claimants had to pay for their sleeping accommodations, they are entitled to reimbursement by the Carrier.

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 violated.

AWARD

Claim for compensation on the basis sought is denied; reimbursement for actual expense incurred by claimants in securing sleeping accommodations on the night in question is granted.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1966.