Award No. 1112
Docket No. DC-1087

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES (370)

NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim for reimbursement for loss suffered by Edwin Crawford, John De Souza, Archie Gibson, Horace Smith, W. Dickson, John K. Carter, Harry Jeffries, Samuel E. Davis, E. A. Beach, Tobias W. Washington and others similarly situated as a result of the management's violation of Rule 2, Paragraph C, of the existing Agreement."

EMPLOYES' STATEMENT OF FACTS: "Rule 2, Paragraph C, of the current agreement provides:

> 'The minimum allowance for a service trip where there is no regular assignment will be eight hours.'

"As an example of Management's action, we cite the time allowance allowed E. A. Beach, working out of regular assignment from April 1, to April 14th inclusive:

Date	Reported	Train	Car	Relieved	Hrs.	Min.
1	2:45 A. M.	68	656	9:35 A. M.	6	50
1	3:30 P. M.	19	622	10:00 P. M.	6	30
2	4:30 A. M.	12	674	10:45 A. M.	6	15
3	3:30 P. M.	17	559	9:10 P. M.	5	40
4	4:45 A. M.	8	557	8:50 A. M.	4	5
4	2:30 P. M.	ph		2:30 P. M.		30
5	4:45 A. M.	8	557	8:30 A. M.	4	—
4	8:00 P. M.	DH	557	12:40 P. M.	4	40
6	1:45 P. M.	15	574	9:40 P. M.	7	55
7	5:00 A. M.	24		12:30 A. M.	7	30
9	3:30 P. M.	67	654	12:25 P. M.	—	—
10	11:45 A. M.	50	651	9:25 P. M.	—	—
13	6:00 P. M.	19	662	10:00 P. M.	4	—
14	5:00 A. M.	68	641	9:35 A. M.	4	35

"The employes have requested that the management cease the procedure in the case of E. A. Beach and others similarly situated and abide by the rules of the existing agreement."

POSITION OF EMPLOYES: "The employes contend that E. A. Beach and others similarly situated claimants are entitled to eight hours for each service trip where there is no regular assignment.

"Rule 2, Paragraph C, of the current agreement clearly provides that the minimum allowance for a service trip where there is no regular assignment

"When the first agreements with dining car employes were negotiated on this railroad, a corresponding rule appeared in the June 1, 1921 agreement covering Dining Car Stewards, this rule reading:

'Minimum Trip: That the minimum allowance for a trip when there is no regular assignment, shall be eight hours.'

"The agreements negotiated with the cooks and waiters at that time contained no corresponding rule but the provisions were applied to them the same as to stewards.

"When Dining Car Employes' Union, Local 351, negotiated its first agreement with this carrier, effective September 1, 1935, the following rule appeared as Section 1 (c):

'Minimum Allowance: The minimum allowance for a service trip when there is no regular assignment will be eight hours.'

"The present agreement with Local 351 contains the identical rule, as Article 2 (c). This latter agreement became effective December 16, 1937.

"The first agreement with Local 370 was negotiated in March, 1938, at which time that local requested the same rules as Local 351 had obtained three months before. With one or two minor exceptions, the same rules were adopted.

"It will thus be apparent that Local 370 acquired Article 2 (c) as the result of prior negotiations between the Carrier and Local 351.

"Article 2 (c) was applied no differently in the paying of the employes involved than it has been applied since April 1, 1938, the effective date of Local 370's first agreement with this Carrier. Furthermore, it was applied no differently than the corresponding rule in the other agreements has been applied since they first came into being.

"To show the Board how the rule has been applied under actual conditions, the Carrier submits statements from former and present Crew Dispatchers as follows:

Exhibit 10—George A. Sturgeon's letter of October 10, 1939
Exhibit 11—V. E. Ball's letter of October 10, 1939
Exhibit 12—T. H. Byrne's letter of October 12, 1939
Exhibit 13—J. T. Robert's letter of October 12, 1939

"As further evidence the Carrier is prepared to submit actual time claims submitted by stewards or waiters-in-charge for themselves and crew on the printed daily time record, Form AD-180, if such evidence should be deemed necessary.

"The Carrier's impression is that Local 370 is trying to get something out of its rule that simply cannot be read in the language itself. Just as Exhibits 5 and 7 pointed out to the employes, a service trip has always constituted 'the leaving and returning to a home terminal.' That is what the original rule meant, and also what the present rule means, and Exhibits 10 to 13, inclusive, support this fact. Local 370 is seeking to have your Board place a new meaning upon it. They want to acquire a new rule without serving the required notice and proceeding in accordance with the Railway Labor Act and the enactment clause of the agreement. This attempt is entirely unwarranted, and your Board should unhesitatingly deny this claim."

OPINION OF BOARD: In behalf of certain dining car employes who do not enjoy regular assignments, claim is made for wage losses resulting, as said, from the carrier's violation of article 2 (c) of the agreement obtaining between it and the contracting authority of these employes. The cited rule reads: "The minimum allowance for a service trip where there is no regular

assignment will be eight hours." Regularly assigned employes of the class here are guaranteed pay for not less than 240 hours per month. Article 2 (a). The intimation is that the employes here are denied regular assignments in order that the carrier may make use of their services to the same practical end as those performed by employes on regular assignments, but upon a wage calculation that works the carrier's enrichment and the claimants' undoing. Perhaps so; but has there been violation of the agreement? We are not disposed to that view.

It appears that claimants, not regularly assigned, as already seen, leave New York on an afternoon train bound for, say, Albany and beyond, and serve in the dining car until the train reaches the station mentioned, or Utica, or Syracuse, or any point, where, in the judgment of the carrier, the services of these employes are not required, when they are detrained, and from thence the next morning they return to New York on another train, serving breakfast as they had served dinner the evening before on the outgoing train. Sleeping quarters at the lay-over point are provided by the carrier. The time credit of the employes under consideration is the sum of that represented by the up-trip and the down-trip, in no event, however, to be less than eight hours.

It is argued in behalf of claimants that within contemplation of the rule each way of the journey should be considered a "service trip," while the carrier urges that such a trip includes "service from the time of reporting at home terminal until return to home terminal." The precedents support the carrier's contention. A like provision in the only other Local mentioned in the record, is applied as by the carrier here. See, also, Supplement 27 to General Order 27, U. S. R. A., issued January 28, 1920.

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 carrier did not violate the agreement invoked in behalf of claimants.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1940.