Award No. 2098
Docket No. DC-2133

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

LEHIGH VALLEY RAILROAD COMPANY

JOINT COUNCIL DINING CAR EMPLOYES

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 370, on the property of the Lehigh Valley Railroad Company, for and in behalf of Robert Hoff and other employes similarly situated that:—

1st By charging claimants for meals and lodging and deducting amounts charged from their wages effective March 1, 1941, the carrier violated current agreement, particularly Rule 6-(c) thereof, and;

2nd that Robert Hoff, et-al, who have been charged for meals and lodging and from whose wages deductions were made shall be reimbursed in the total amount thus deducted retroactive to March 1st, 1941.

EMPLOYES' STATEMENT OF FACTS: There is in existence an agreement governing chefs, cooks, waiters-in-charge and waiters employed on Dining Cars, Club Cars and Club Dining Cars in the Dining Car Department of the carrier and Local 370 as representatives of the above classes of employes dated November 1, 1937.

Rule 6-(c) of this agreement provides: "Meals for employes shall be provided without cost when on duty or deadheading. Sleeping quarters shall be provided when away from home terminals."

Prior to March 1st, 1941, no charge was made by the carrier for meals or lodging in accordance with rule 6-(c) quoted above. During the period from October 24, 1939 to March 1st, 1941, when the 30¢ rate was in effect under the "Act", the negotiated rate was 29 and a fraction cent per hour. paying 30 cents and therefore presented no claim for this period.

Effective March 1st, 1941 the carrier, without conference or agreement with the representatives began to charge for meals and lodging and deducted this charge from the wage of the employes.

POSITION OF EMPLOYES: As of February 14, 1941, the Administrator Wage and Hour Division, U. S. Department of Labor, issued an "Order" establishing minimum wages in the Railroad Industry from which we quote in part:

". . . Part 591

Minimum Wage Rate in the Railroad Carrier Industry.

The intent of the statute, therefore, is that the cost of meals and lodgings furnished under conditions prescribed is to be considered as money wages, which added to the money wages paid under the wage schedule, must produce an hourly rate of not less than 36¢. The statute was in effect during the period covered by this controversy. Therefore, during that period the employes involved were receiving not only what the current schedule called for, but also more than the minimum prescribed by the statute. The only change in the whole situation was one of accounting or bookkeeping, whereby, although the same benefits in wages and facilities were given employes as theretofore, on March 1st, 1941, a part of the facilities, viz., a part of the actual cost of the meals and lodging, was called wages. There was no loss to the employes, as they received exactly what their agreement called for.

The Carrier's action in claiming credit for a small part of the cost of meals and lodgings furnished was strictly in accordance with the law. The statute defines wages as including meals and lodgings where customarily furnished, and Interpretive Bulletin No. 3, Sections 10, 11 and 12, issued by the Administrator of the Wage and Hour Division, adds the condition that the acceptance of the facility by the employes be voluntary and uncoerced. There is no claim here that the facilities were not customarily furnished. The schedule agreement itself, which ante-dates the statute, provides for them, and, of course, for the same reason there can be no claim that they were not voluntarily accepted. Therefore, the conditions upon which credit may be claimed by the carrier for the reasonable cost of meals and lodgings have been fully met by this carrier.

There is no claim that the cost of the facilities for which credit was taken was unreasonable. If such claim is made, Carrier is prepared to show that that cost was established after careful study and actual test, and is, in fact, less than that which the use of the formula approved by the Administrator would have produced. It is, in fact, considerably less than that claimed on other carriers.

In conclusion the Carrier submits that there has been no violation of the current agreement, particularly Rule 6-c, in that the employes received throughout the period involved in this dispute exactly what was due them under that agreement, viz., $70 per month with meals and lodging, and they have lost nothing by the accounting or bookkeeping method adopted by the carrier in order to be able to demonstrate that the wage rate established by the agreement of November 1st, 1937, was not less than the minimum prescribed by the Fair Labor Standards Act.

Carrier respectfully requests that this claim be dismissed as not supported by the evidence.

OPINION OF BOARD: The facts in this claim are not in dispute. Under the current agreement, the claimant, and other employes similarly situated, received $70.00 per month for his monthly services. Under Regulation 6-c, he also received meals without cost when on duty or deadheading, and sleeping quarters when away from home terminals.

In other words, for 240 hours per month service he received $70.00 (or 30 cents per hour), and meals and lodging when away from home.

Effective March 1, 1941, by an order of the Administrator of the Wage and Hour Division, United States Department of Labor, the minimum of 36 cents an hour must be paid to every employe of the Railroad Carrier. Since that date, respondent has complied with that order, but has deducted from the employe's pay of $86.40 his meals and lodging. That is to say, if his meals and lodging amounted to $16.40 a month, the sum was charged against his salary, but no more would be deducted if his meals and lodging exceeded that sum.

Respondent contends that under Subsection (m), Section 3, of the Fair Labor Standard Act, it has a right to take into account the reasonable cost of the meals and lodging furnished its employes. This Division of the Board has repeatedly held that it is not concerned with the enforcement or violation of this Act. (See Awards Nos. 1228, 1229, 1726, 1769, 1770, and 1804). An attempt to construe Subsection (m), Section 3, of the Fair Labor Standard Act would be beyond the jurisdiction of this Board. (Also, see Award No. 813 of the Second Division of this Board). "It is well established that the function of this Board is limited to interpreting and applyng the rules agreed upon by the parties (See Award No. 1589)." See also, Awards Nos. 1726 and 1727.

The Board is of the opinion this dispute is governed by Awards Nos. 1726 and 1727. In the latter award, the contract called for 33 cents per hour plus board, and that Award held: "The attempt of the Carrier to charge for board is a violation of the agreement * * *."

By operation of law, the claimant is entitled to 36 cents per hour. Under the agreement, he is entitled to his monthly wage, whether fixed by law or contract, and his meals when on duty or deadheading, and sleeping quarters when away from home terminals.

It follows that the Carrier violated the agreement.

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

The Carrier violated the provision of the agreement.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.