Award No. 2189
Docket No. DC-2137

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

FRED HARVEY SERVICE, INC.

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local No. 351, Hotel and Restaurant Employes International Alliance, on the property of the Santa Fe System (Fred Harvey, Inc.) for and in behalf of the regularly assigned crews on Dining Cars on trains 3 and 4 for three (3) days compensation for each trip retroactive to May 31, 1941, as a result of Carrier's violation of Articles 2, Sections 3, 4 and 12 and Article 4, Section 10 of the agreement of July 1, 1940.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement dated July 1, 1940 designated as "Agreement between Fred Harvey and Dining Car Employes Union, Local No. 351, covering Rules, Working Conditions and Rates of Pay for Employes represented by said Union."

Article 2—Section 3 and 4 of the above referred to Agreement reads as follows:

> "**Section 3.** On the runs listed below the miles shown opposite each run shall constitute a calendar month's work for which the monthly rates apply; it being understood that should the scheduled running time or mileage of any train listed be changed that the basic mileages for that train will be revised to a mileage to be agreed upon by the Company and the Employes' Committee. It is further understood that transcontinental trains operating between Chicago and Los Angeles on a scheduled running time of less than 110 hours for a round trip will come within a classification of 15,000 miles or over, and transcontinental trains on a scheduled running time of 110 hours or more for a round trip will come within a classification of less than 15,000 miles:

	MILES		
RUNS	**28-Day Month**	**30-Day Month**	**31-Day Month**
Chief	13,863	14,853	15,348
Super Chief	13,368	14,642	15,279
El Capitan	13,368	14,642	15,279
California Limited	12,638	13,542	13,993
Scout	12,550	13,446	13,894
Grand Canyon Limited	12,538	13,434	13,882
Wellington-Belen	13,130	13,130	13,787
Chicagoan-Kansas Cityan	13,600	13,600	13,600
Ranger	11,816	12,660	13,082
Golden Gate	10,048	10,048	10,048
Kansas City-Shopton	9,959	9,959	10,392

POSITION OF CARRIER: The Carrier contends that the claim of the employes is not valid, that there has been no violation of the provisions of the existing agreement, and that the claim is a subject invoking a change in rules and not an interpretation of the existing rules.

The Carrier further contends that the employes have improperly presented their claim to the Board in requesting—

> "Claim—for and in behalf of the regularly assigned crews on Dining Cars on Trains 3 and 4 for three days compensation for each trip retroactive to May 31, 1941, as a result of Carrier's violation of Article 2, Section 3, 4 and 12 and Article 4, Section 10 of the Agreement of July 1, 1940."

whereas in the initial request for a change of rules they asked for:

"CLAIM

> Three extra days' pay for each employe who serves on Trains 123 and 124 who was regularly assigned to Trains 3 and 4."

No definite period of time is mentioned in either claim nor have the employes given specific instances of violations of the sections of the schedule referred to and which the Carrier contends it has not violated. The employes may as well have claimed extra pay for any given number of days, or for any of the runs, or requested a complete change of rules and working conditions and appealed such a dispute to the Board for interpretation as to have presented the claim shown in the foregoing "Statement of Claim."

OPINION OF BOARD: The crews on the dining cars on trains 3 and 4, transcontinental trains, during the summer of 1941 were required during their layover period at Los Angeles to make a trip of 620 miles to Needles on trains 123 and 124. On these trips to Needles they left Los Angeles at 2:00 P. M. one day and returned the next day at 11:00 A. M. The crews made a round trip on trains 3 and 4 and this trip to Needles every eleven days. During this period an extra crew was added to the crew pool in order to make it possible for the crews to have more layover time. Apparently this same method of using the dining car crews from transcontinental trains on the trips to Needles was used during the summers of 1939 and 1940. For each trip to Needles the crews were paid 2/25 of their monthly rates of pay.

In this claim the crews of trains 3 and 4 are claiming three days' additional compensation for each round trip during the period they were required to make the trip to Needles. They say they are entitled to this additional compensation "as a result of carrier's violation of Article II, Sections 3, 4 and 12 and Article IV, Section 10 of the agreement of July 1, 1940." They contend that the run to Needles was either a new run, or a seasonal run or changed trains 3 and 4 to make them new runs and in either event should have been bulletined for bids. In their original Submission the employes seemed to be claiming the three additional days as a penalty for a violation of the rules by the carrier. In their Rebuttal they base their claim on the theory of "doubling."

The carrier contends that the run to Needles was a "side trip" within the meaning of Artitcle II, Section 12 of the agreement and that the men involved were paid pursuant to the provisions of said section.

The employes say the run to Needles was not a side trip because it lasted all summer and because it was "invariably added to trains 3 and 4 each summer season—thus constituting a 'seasonal run' within the meaning and intent of Section 4, Article 10."

The term "side trip" is not defined in the agreement. In Section 12 of Article II, however, in fixing the method of computing the compensation for side trips this language is used, "When employes on any transcontinental

trains are used out of terminals during layover for side trips they shall be credited with 1/25th of their monthly rate for each 24 hours or fraction thereof so used." This language seems to describe the runs here in question. These runs had been made in the same manner in the summer of 1939 and were being so made in 1940 when this agreement became effective. On December 1, 1941, after the service here in question, the agreement was amended by an appendix affecting the rates of pay but Section 12 of Article II was not changed. It is significant that the record directs our attention to no other runs to which this section applies.

In view of these facts we must assume that by said section the parties intended to provide a method for computing compensation for runs such as those here in question.

The carrier did so compute and pay for these runs.

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 there was no violation of the agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1943.