Award No. 2208
Docket No. DC-2190

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 370, Hotel and Restaurant Employes' International Alliance, for and in behalf of John Ford and other Dining Car Employes of the Delaware, Lackawanna & Western R. R. Co. who are similarly situated that:

1. The carrier without conference or negotiations abrogated the mutual understanding to provide free meals to Dining Car Employes and established a charge for meals and deducted such charge from the wages of the employes effective March 1, 1941, and—

2. That John Ford et al. shall be reimbursed in the total amount thus deducted retroactive to March 1, 1941.

EMPLOYES' STATEMENT OF FACTS: Prior to January 1, 1938, the employes herein involved being unorganized were not covered by any collective agreement pertaining to wages, hours of service or terms of employment. However the carrier has adopted a policy of paying uniform wages for each class of work performed and uniform hours of services and terms of employment such as generally prevailed for Dining Car Employes in the railroad industry. In addition to the wages carrier paid to its employes it also furnished at its own expense and as overhead costs, items necessary in the conduct of its Dining Car business,—i. e. furnished and laundered white linen jackets or coats and aprons, pencils, meal checks, trays, sleeping accommodations and meals for the employes while away from home terminals. The furnishing of these items at the expense of the carrier was an historical custom in the dining car departments of the several carriers in the industry and has obtained for as long as dining cars were in existence.

On January 1, 1938 the carrier entered into a collective bargaining agreement, negotiated in behalf of these dining car employes by our International Union. This agreement contained no written rules respecting the granting of meals at the carrier's expense, but it was mutually understood by both parties at the time of conference that long established practice that has been in existence for many years prior to the effective date of the agreement would be continued. The carrier in that respectfully performed its part of the agreement and furnished meals at its own expense and continued to do so until October 24, 1939.

Rule 10—of the above referred to agreement however did provide that the carrier would provide sleeping accommodations when away from home terminals.

The Court stated that uniforms might be such a facility but that hand-trucks and chairs used in the service of the railroad company were not.

Williams v. Jacksonville Terminal Co.
118 Fed. (2) 324

The language employed by Congress in framing the statute so plainly permits employers to take credit for food and lodging customarily furnished to employes that only one construction is possible. In any event, the decision of the courts in the Shelton and Williams cases that the statute means exactly what it says are conclusive on this Board.

> "It is not within the province of courts (sic this Board) to shape the public policy of the nation; this is a prerogative of Congress. The Act is plain and unambiguous and must be understood as written."

Reeves v. Howard County Refining Co.
33 Fed. Supp. 90

From the foregoing it is not subject to argument that even if this Board had jurisdiction to entertain the claim it would be bound to obey the will of Congress and the decisions of the Federal Courts that the Carrier may lawfully take such credits and dismiss the claim, since it may not substitute its own opinion for that of Congress and the courts.

Waiter Ford and his co-claimants were under no compulsion to accept the lodging and meals customarily furnished by the Carrier. When they did not do so they were paid the value of such facilities in cash. This is conclusively demonstrated in Carrier's Exhibit B, from which it is readily seen that whenever Waiter Ford did not avail himself of the lodging and meals furnished by the Carrier the cash value thereof was paid to him to ensure a minimum rate of 36 cents per hour. Consequently the word "deductions" as employed in the highly generalized statement of claim is a misnomer, since it undisputably appears that the claimants have at all times received everything they were entitled to under both the alleged "understanding" and the statute.

See the affidavit of C. F. Bayer, Superintendent of Dining Car Service (Exhibit "C").

To summarize, claimants must rely on the untenable proposition that this Board may over-ride the law of the land and decree that claimants may take the benefits of the Fair Labor Standards Act without accepting its burdens, a proposition not only contrary to law but repugnant on its face to all fair thinking men.

Wherefore, the Carrier prays that the claim be dismissed:

1. For lack of jurisdiction since it has been shown that the claim asserted herein is enforceable only in a court of competent jurisdiction in a suit brought under the Fair Labor Standards Act.

2. For lack of merit, since it has been shown that the claimants have received everything they were entitled to under the "understanding" and under the law.

OPINION OF BOARD: The questions presented by this claim are the same as those presented by the claim in Docket No. DC-2135, decided by Award No. 2206. For the reasons assigned in that award we hold that this claim discloses a violation of the Agreement by the carrier.

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 violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1943.

Dissent to Award No. 2208, Docket No. DC-2190

We dissent to this Award for the reasons stated in Dissent to Award 2206.

/s/ C. P. Dugan
/s/ A. H. Jones
/s/ R. H. Allison
/s/ R. F. Ray
/s/ C. C. Cook