

Award No. 2230  
Docket No. DC-2295

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES**  
**NEW YORK CENTRAL SYSTEM (LINE WEST)**

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employes Local 351, Hotel & Restaurant Employes International Alliance, on the property of the New York Central System for and in behalf of Mr. Charles Buck, for \$10.25 deducted from his monthly guarantee during the month of July 1942, as a result of carrier's improper removal of Mr. Buck from service on July 31, 1942.

**EMPLOYES' STATEMENT OF FACTS:** Mr. Charles Buck is employed as a Waiter in the Dining Car Department of the New York Central System (Line West). On July 28, 1942, he was assigned to the dining car on train No. 31, leaving Detroit, Michigan on that date. Some time during that day Mr. Buck entered into conversation with Mr. Stebbins, Inspector of Service relative to the service of some members of the Armed Forces. Nothing further was heard of this conversation until July 31, 1942, when Mr. Buck reported for his regular assignment on train No. 30.

Upon reporting Mr. Buck was advised that he would be required to make a written statement with respect to the above mentioned conversation, whereupon Mr. Buck stated that he would be glad to comply with this request in the presence of his representative. Management then refused to permit Mr. Buck to work until the statement was made.

**POSITION OF EMPLOYES:** The claim in this instant case is based upon the following rules of the current agreement:

**"Rule 3**

(a) For regularly assigned employes, 240 hours or less shall constitute a basic month. All time in excess of 240 hours will be compensated at the pro rata hourly rates."

**"Rule 3**

(c) When employes are required to perform such service as stocking or unstocking cars they shall be credited with time allowances as follows:

(1) If called after having been released from previous service, four (4) hours' time for four (4) hours' service or less, eight (8) hours' time for over four (4) hours and up to eight (8) hours' service, actual time consumed when the service exceeds eight (8) hours.

(2) If required to report in advance of scheduled starting time to transfer from one car to another, or if held on duty after completing work on a run,—actual time worked, with a minimum allowance of two (2) hours.

The only claim which the union is now making is for \$10.25 "deducted from his (Buck's) monthly guarantee during the month of July, 1942, as a result of carrier's improper removal of Mr. Buck from service on July 31, 1942." (The amount is stated in Exhibits 9 and 11 as \$10.74.)

It is clearly apparent from the evidence presented herein that this claimed reimbursement is without justification, for the reason that Buck was not prevented from working full time by reason of any responsibility of the carrier, but to the contrary was the result of Buck's election to take time out to handle the matter in his own way. If he had elected to make the statement himself, as other employees nearly always do, or had requested a postponement of the filing of the statement until he could talk with the Chairman, there would have been no loss of working time. However, instead of making the report to his Superintendent in a reasonable manner, he took matters into his own hands in a rather insolent way. To allow him pay for this alleged loss of earnings would only serve to encourage such insolence.

**OPINION OF BOARD:** The parties are in disagreement as to the facts in this dispute. The Employes contend Buck was denied the privilege of going out on his run until he had made a written statement concerning his oral complaint of July 28, 1942, to Inspector Stebbins; whereas, the Carrier denies Employes' contention and states that Buck declined to go out on his run July 31 and informed the Superintendent that, "I could get someone else to work in his place on Train 30 that trip."

The facts as stated by the parties are so conflicting that the Division cannot do other than remand the case.

With the view of avoiding such misunderstandings in the future, the Board suggests the parties undertake to reach an understanding as to the opportunity to be afforded employees to make written statements requested 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 case will be remanded in accordance with the Opinion.

#### AWARD

Case remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 8th day of July, 1943.