Award No. 2741
Docket No. DC-2551

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 370, Hotel and Restaurant Employes International Alliance, on the property of the Pennsylvania Railroad Company, for and in behalf of Mr. R. T. Ray, et al., for ten (10) hours and twenty (20) minutes at Cincinnati, Ohio, November 6th and 7th, 1942, as a result of management's failure to provide sleeping accommodations in accordance with the agreed upon notice of February 17, 1937.

EMPLOYES' STATEMENT OF FACTS: On November 6, 1942, Waiter-in-Charge, R. T. Ray and crew, consisting of:

E. S. Renfroe	Chef
J. M. Bradley	2nd Cook
Sam Blackburn	3rd Cook
Leon Williams	4th Cook
Emmet Davis	Stationary Pantryman
F. W. Hunt	1st Waiter
W. P. Anderson	2nd Waiter
Ed. Taylor	3rd Waiter
John Teer	4th Waiter
Farise Barnes	5th Waiter

arrived in Cincinnati, Ohio of train No. 208 at 9:40 P. M.

Due to extra business the crew dormitories were filled and no sleeping accommodations were available for Mr. Ray and his crew.

Effective October 1, 1936, management entered into an agreement covering the class of employes with our International Union. At the time of Negotiations management was charging employes 25¢ per night to sleep in company dormitories, or a maximum monthly charge of $2.75. The representatives during negotiations offered a proposal to eliminate this charge for sleeping accommodations which was declined at the time by management. Management did however, agree to meet with the representatives within six months from October 1, 1936, for the purpose of discussing and disposing of this request.

Accordingly at the carrier's invitation a meeting was had with the General Superintendent and the General Chairman on February 17th, 1937, which resulted in the following notice being issued and letters exchanged.

seems obvious that the Carrier's practice of paying up to one dollar ($1.00) per night to an employe, for whom sleeping accommodations arranged by the Carrier are not available at away-from-home points, constitutes a reasonable reimbursement enabling such employe to secure similar accommodations from other persons. Thus, the Carrier has followed a practice in the past (and is prepared to adhere to that practice in this case), which practice accords to Dining Car employes the full damages to which they are entitled under the law when the obligation to provide sleeping accommodations is not fulfilled in quarters maintained by the Carrier.

The Carrier submits, therefore, that it has not violated any of its legal obligations in this matter and that the instant claim should be dismissed by your Honorable Board.

V. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, Is Required to Give Effect to the Agreements Between the Parties and to Decide the Present Dispute in Accordance Therewith.

The Railway Labor Act, in Section 3 (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements covering rates of pay, rules or working Conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreements between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the agreements between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

It is respectfully submitted that the Carrier's action in this matter does not constitute a violation of the applicable agreements, and, consequently, that the Claimants are not entitled to the compensation claimed.

OPINION OF BOARD: On November 6, 1942, R. T. Ray and ten other employes named in Employes' Statement of Facts arrived in Cincinnati and were released from duty at 9:40 P. M. They found the crew dormitories occupied and no other provisions made for other sleeping space. This crew did not obtain other sleeping accommodations, but stayed all night in the waiting room at the depot. They were required to report for duty at 8:00 A. M. the next day, November 7th.

Effective March 1, 1937, this Carrier agreed to "provide free sleeping accommodations for dining car employes who are required by the Company to lay over at away from home points." Cincinnati was away from home point of this crew.

The Employes contend that since the Carrier did not furnish them sleeping quarters at the time in question they should be paid for 10 hours and 20 minutes, that is from 9:40 P. M., November 6th to 8:00 A. M., November 7th. Employes base their claim mainly under Rule 4-E-1, which provides, "Deadheading * * * will be paid the same as live service, except that where sleeping accommodations are provided * * *."

The Employes say that since sleeping accommodations were not provided, they were equivalent to deadheading, and come under the above rule. To this contention this Board does not agree. This crew was not deadheading, but was in Cincinnati at the time in question.

There is no doubt that the Carrier breached its agreement in not furnishing this crew sleeping accommodations, and that if the crew had obtained available sleeping quarters the crew members would be entitled to be re-

imbursed by the Carrier for any reasonable expense they were out in obtaining them. This is true because there is nothing in the Agreement as to fixed or liquidated damage in the event the Carrier fails to furnish sleeping quarters. On certain occasions, the Carrier had allowed the members one dollar when it failed to furnish crew members sleeping accommodations, and in this instance has offered this crew one dollar and a half, but the Employes contend that the dollar allowance, or even the dollar and a half offer, is not sufficient to have provided sleeping accommodations. This may be true, but as we have just said that the measure of damage for the failure of the Carrier to provide sleeping accommodations is the reasonable expense each member of the crew was required to pay to obtain sleeping accommodations for himself.

Under the facts in this record, this crew did not obtain any sleeping quarters. The claim for damage for loss of sleep or rest is too speculative to be considered as an element of damage sustained by the Carrier's breach of the contract.

It follows, that the claim as presented should be denied.

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 under the claim as presented there was no violation of the contract.

AWARD

The claim as presented denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of December, 1944.