Award No. 3252
Docket No. DC-3188

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

Berryman Henwood, Trustee

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 385, on the property of the St. Louis Southwestern Railway Company, for and in behalf of the Dining Car Employes covered by the scope of the Agreement between the parties to this dispute for the difference between what they were paid and what they have earned under the terms of the Agreement. Claim is made because of Carrier's violation of Rule No. 2.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement dated September 1, 1937, copies of which are on file with the Third Division. National Railroad Adjustment Board, governing the hours of service, rates of pay and other conditions of employment of the Carrier's Dining Car-Service Department, Rule 2 of the agreement provides as follows:

RULE 2

HOURS OF SERVICE

2-1. 240 hours or less in regular assignment will constitute a month's work for regular employes ready for service the entire month and who lose no time on their own account. Employes temporarily detached from regular assignment at Trustee's request shall not suffer loss of pay. Employes will be advised of their hours of service in regular assignment. This rule does not apply to bus waiters.

2-2. Employes, with the exception of bus waiters, will be paid overtime on actual minute basis for all time on duty in regular assignment in excess of 240 hours at pro rata rate, except that actual continuous time, not required for service on any trip, or at any layover, turnaround, setout or terminal point, shall be deducted from continuity of time, in all cases where the interval of release from service exceeds one hour. Employes assigned to special service, such as excursions, convention trips, etc., will be allowed eight (8) hours pay for each day when set out at away from headquarters point.

2-3. Time will be counted as continuous on each trip from the time required to report for duty until released from duty, subject to exceptions mentioned in Paragraph 2-2 of this rule.

Therefore, it is clear that parties to the agreement recognized that the nature of work in which dining car employes are engaged require that they be moved from place to place to be in position to handle their duties; and that they might be so moved without pay under certain conditions.

The Carrier offered to pay one-half time to employes released enroute between 9:00 P. M. and 7:00 A. M. if sleeping accommodations are not furnished on the train, the same as if deadheading. This offer was made strictly as a compromise in an effort to settle the long dispute, and not as a concession that employes released enroute are actually deadheading under Rule 5. Movement during release is a necessary consequence of release enroute, and had it been intended that payment continue under another rule, there would be no point in the provision that time "not required for service on any trip * * * shall be deducted * * *." Rule 2 is completed in itself and provides for the only payment intended under the conditions specified therein.

In handling this case, the Employes cited Award 2704 of this Board, involving a dispute on the M. K. T. Railroad. This award appears to be in conflict with Award 404 of this Board, previously referred to herein. Both awards involved the release of men prior to arrival at their layover terminal. While the rules contain slightly different language, both evidently had their origin in Article VI of Supplement 27 to General Order 27, quoted above, and were intended to have the same meaning insofar as release enroute.

The pertinent part of rule involved in Award 2704 reads as follows:

> "* * * except that actual continuous time, not required for service on any trip, at any layover, turnaround, set-out or terminal point shall be deducted from the continuity of time in all cases where the interval or release from service exceeds one hour; plus not to exceed three periods daily or fifteen (15) minutes each for meals."

Decision was to the effect that:

> "* * * assignments of hours of service thereunder must be terminated **at** or **after** the **completion of the trip."**
> (Emphasis supplied).

apparently on the basis that the words "at any lay-over, turnaround, set-out or terminal point" merely modify the word "trip" or describe the points "on any trip" at which release might be made.

The rule involved in the present case contains the conjunction "or" following the word "trip". It reads:

> "* * * on any trip, **or** at any layover, turnaround, set-out or terminal point * * *." (Emphasis supplied.)

Hence the term "on any trip" clearly means the movement from point to point as distinguished and separated from the term governing release **at points,** the same as Article VI of Supplement 27 to General Order 27. Consequently, the Opinion in Award 2704 is inapplicable in this case.

Award 404 denied a claim similar to that now under consideration and, in the Opinion of this Carrier, placed the correct interpretation upon similar rules governing release of dining car employes enroute.

As pointed out above, the rules plainly permit release enroute and deduction of time so released, when in excess of one hour. Th Employes' claim that they be paid continuous time from terminal to terminal is contrary to the specific provisions of the rule, as well as its clear intent, and the Carrier respectfully requests that the claim be denied.

OPINION OF BOARD: The crew of which Claimant was a member was required to report at the depot in Texarkana at 5:25 P. M. and was scheduled to arrive in Dallas at 11:25 P. M. It reported for duty again at 6:10 A. M. at Dallas for return trip to Memphis, arriving at 10:40 P. M. It reported for duty at Memphis at 6:45 A. M. for the return trip to Dallas, arriving at 11:25 P. M. Claimant was released from service at 10:00 P. M., one hour and

twenty-five minutes before arriving at Dallas. Claimant contends that he is entitled to pay for the one hour and twenty-five minutes under the provisions of Rule 2 of the current Agreement.

The applicable portion of Rule 2 is as follows:

"2-2. Employes, with the exception of bus waiters, will be paid overtime on actual minute basis for all time on duty in regular assignment in excess of 240 hours at pro rata rate, except that actual continuous time, not required for service on any trip, or at any layover, turnaround, set-out or terminal point, shall be deducted from the continuity of time in all cases where the interval of release from service exceeds one hour. * * *

"2-3. Time will be counted as continuous on each trip from the time required to report for duty until released from duty, subject to exceptions mentioned in Paragraph 2-2 of this rule."

We think the foregoing rule provides that Claimant shall be paid from time of reporting until the end of his trip, less deductions authorized to be made by the rule itself. The deduction authorized are: actual continuous time (1) not required for service on any trip, (2) at any layover, (3) turnaround, (4) set-out or (5) terminal point, where such time exceeds one hour. It is evidence that Claimant falls without classification (1). He was not required to perform service after 10:00 P. M. and until 11:25 P. M., the time of arrival at Dallas. Under the plain terms of the rule, the deduction of the one hour and twenty-five minutes was authorized by the rule.

Claimant relies upon Award No. 2704. We think there is a distinguishing feature in the rule involved in that case which required a contrary result. In that case, the rule provided for overtime for all time on duty in excess of 240 hours "except that actual continuous time, not required for service on any trip, at any layover, turnaround set-out or terminal point shall be deducted from the continuity of time in all cases where the interval of release from service exceeds one hour." We construed the words "at any layover, turnaround, set-out or terminal point" as qualifying and limiting the words "not required for service on any trip". The time claimed in that case not being "at any layover, turnaround, set-out or terminal point," we decided that it was not a deduction authorized to be made under the terms of the rule.

In the present case the rule provides that all time in excess of 240 hours per month should constitute overtime except "actual continuous time, not required for service on any trip, or at any layover, turnaround, set-out or terminal point". It clearly indicates that time "not required for service on any trip" was something in addition to actual continuous time "at any layover, turnaround, set-out or terminal point". In other words, the time claimed in the present case was an authorized deduction under the applicable rule while in Award No. 2704, it was not. The contention of the Carrier is correct under the plain wording of the rule.

It is urged that in any event Claimant would be entitled to pay under the Deadheading Rule. We think not. Rule 2 is complete in itself and provides for all the pay that Claimant is to receive for the services therein specified. In agreeing to the deduction of continuous time in excess of one hour when not required for service on any trip, the parties did not contemplate taking it from under Rule 2 and placing it under some other rule of the Agreement. It was to be an absolute deduction in determining overtime in excess of 240 hours per month.

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 parties waived oral hearing thereon;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 10th day of July, 1946.