

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS OF AMERICA

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Chef Leo Frey for 480 hours at the chef's rate of pay from January 15, 1944 to September 19, 1945, inclusive, for stocking dining cars as per statement furnished the Carrier, and for all Chefs, Second and Third Cooks at the rates applicable to service performed January 15, 1944 to September 19, 1945, inclusive.

JOINT STATEMENT OF FACTS: Rule 30 of the Agreement between the Order of Railway Conductors and the Great Northern Railway, effective August 1, 1942, covering wages and working conditions of dining car Chefs, Second and Third Cooks, reads as follows:

"Employees required to perform service in stocking, conditioning or transferring equipment of dining cars, or preparation of meals, in advance of actual service or movement of the car, will be paid for all time so employed on a minute basis, with a minimum of three hours."

In a conference with the representatives of the Employees on September 20, 1945, in connection with other matters, the question of the proper application of the above rule was raised. Prior to that time, the time specified in the Rule for the specific service referred to therein, when performed in conjunction with the uninterrupted completion of such trip, had been combined with the time of the trip and paid for on a continuous time basis and no claim for any other application of the Rule had previously been made. It was developed in conference that this method of payment was not in accord with the intent of the Rule and that the proper application entitled the Employees to compensation on the basis of an arbitrary allowance in addition to pay for the trip of the allowance specified in the Rule.

POSITION OF EMPLOYEES: When it was developed at the conference held on September 20, 1945, that the Chefs, Second and Third Cooks had not been compensated in accordance with their Rule 30, the Carrier instructed the Superintendent of Dining Cars to compensate them in accordance with the Rule and they have been so compensated from September 20, 1945, up until the present time, but the Carrier has declined to compensate these employees for like service performed prior to September 20, 1945, claiming that Rule 22, reading as follows, is controlling:

"Claims regarding improper payment under the provisions of this schedule must be filed with the proper supervising officer within 30 days of the date payment is made to the employee for such

that the Carrier should not take undue advantage and not pay these employees the money they have honestly earned and are rightfully entitled to.

We are respectfully asking the Board to consider this case strictly on its merits.

CARRIER'S REPLY TO EMPLOYEES' POSITION: The position taken by the employees that Rule 22 is not controlling in the instant case since this matter was never in dispute is, of course, obviously untenable. Rule 22 covers "claims regarding improper payment". In his letter of February 25, 1946 presenting this matter to me, Mr. Hansen, the General Chairman of the Order of Railway Conductors, states in part: "It was brought out that these employees had been improperly compensated". Certainly, if they have been "improperly compensated" it constituted an "improper payment." Again, in this same letter Mr. Hansen says "These chiefs have now made claims for retroactive payment". Hence this is a claim, and putting both together it comes under the category, of course, of "claims regarding improper payment".

Furthermore, there cannot be any question relative to the acquiescence of the employees over a long period in the improper payment nor can there be any question surely of the "actual or constructive knowledge" of their rights under schedule rules, since it will be noted that the same Mr. Frey, in whose behalf this claim is now filed, was one of the signatories to the agreement in which Rules 22 and 30 involved herein appear.

Therefore, the Carrier desires to reiterate its position that not only is Rule 22 very specifically controlling in this case but that even if it were not so controlling the employees would have forfeited any right to the retroactive payments claimed by them by virtue of their long continued acceptance of such improper payments without protest, thereby permitting managerial representatives making such payments to continue in the belief that the Agreement was being properly complied with, which principle, as pointed out in the Carrier's original submission, has been repeatedly upheld in awards of your Board, and the Carrier feels that your Board can do no other than so rule.

This joint submission, consisting of Statement of Claim, Joint Statement of Facts, Position of Employees, Position of Carrier, Employees' Reply to Carrier's Position and Carrier's Reply to Employees' Position, contains the entire facts and argument to which the parties desire consideration to be given, and they hereby jointly waive oral hearing.

OPINION OF BOARD: The parties are agreed as to the meaning of Rule 30, upon which the claim is based; and are also agreed that, since September 20, 1945 employees have been paid in accordance with its terms for performing the services specified in it. Further, they are agreed that prior to September 20, 1945 employees were not so paid for such services.

The claim is for payment in accordance with the provisions of the rule for the period beginning January 15, 1944 and ending September 19, 1945. The claim was presented to the Carrier January 28, 1946.

The Carrier invokes Rule 22 as a bar to the claim. The rule provides:

"Claims regarding improper payment under the provisions of this schedule must be filed with the proper supervising officer within 30 days of the date payment is made to the employee for such service period. **Retroactive claims in excess of that period will not be considered.**" (Emphasis supplied.)

The rule is too plain for construction. To allow the claim here presented would effectually wipe the rule out of the Agreement.

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 Employees involved in this dispute are respectively carrier and employees 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 claim is barred by Rule No. 22.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of January, 1947.