

Award No. 3559

Docket No. DC-3516

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

**JOINT COUNCIL DINING CAR EMPLOYES**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
OF TEXAS**

**STATEMENT OF CLAIM:** Claim of the Joint Council Dining Car Employees (Local 645) that:

(1) The Carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) violated and continues to violate its agreement with the organization when on and after December 19, 1944, it failed and refused to make proper payment to Clarence Whitmore, et al., for "on duty time" after 9:00 p.m. and before arrival of Train No. 24 at Denison, Texas, and after 9:00 p.m. and before the arrival of Train No. 6 at New Franklin, Missouri; and after 9:00 p.m. and before the arrival of Train No. 8 at Muskogee, Oklahoma, and after 10:00 p.m. and before the arrival of Train No. 2 at Muskogee, Oklahoma

(2) The Carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) refused and continues to refuse to make the proper wage payments as authorized by the agreement rules; and

(3) The Carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) shall now be required by an appropriate award and order of the Board to pay for all "on duty time" after 9:00 p.m. on each and every day since December 19, 1944, under the circumstances set out in the statement of facts and as the definition of Rule 2, and

(4) The Carrier (Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas) has refused and continues to refuse to make effective Rule 7 of the current agreement, shall now again be ordered to apply Rule 7 in its entirety henceforward; and

(5) The following employees who are involved in this dispute, and any and all others who are involved, either directly or indirectly, shall be reimbursed for any and all money losses suffered by them as the result of the Carrier's refusal to properly apply the agreement rules:

Joseph Carrol  
Reeder Mosely  
Shirley Penson  
H. L. Fields  
Cupid Roy  
George Barrett

William Fifer  
George Renfro  
Eddie Tindle  
Herman Grace  
Pat Dibrell  
Lorenzo Miles

William Christian  
John B Jones  
Ernest Richardson  
Shandy Barrett  
Charles Wyman, Jr.  
Alfred Day

Isaac Gardner  
James Neal  
Willie Smith  
Mose Nicholson  
Charlie Price  
Edward Qualls  
William Hadley  
Aaron Handy  
William Love  
Louis Davis  
Otis Brothers  
George Dilworth  
Taylor Sewell  
George Thibodeaux  
Nealie Washington  
F. C. Reed  
Nathaniel Bright  
Jack Acklen  
John Lewis  
Earl Briscoe  
William O. Harris  
Lindsey Briscoe  
Dennis Aldridge  
Joe Bell  
Zack Franklin  
Carl Harrison  
Henry Bell  
Bennie Powell  
Will Hammon  
Jesse Alexander

E. J. Moore  
Howard Brown  
Alex Johnson, Jr.  
Lorenzo French  
Herbert Harrison  
Leslie Williams  
John Mayo  
Morgin Rosemond  
W. L. Brown  
Edgar Cook  
Clarenzo Cook  
Leroy Green  
C. R. Hodges  
Leo Williams  
Nat Winchell  
Booker Ervin  
Sam Strong  
F. D. Calmore  
Earl Anderson  
Euri Hagan  
Thomas Johnson  
Albert Sayles  
Claude Shipman  
Willie Capes  
James J. Young  
Fred Williams  
Osborne Reid  
Algie Hill  
Micke Winchell  
Judge Barr

Eldrege Lott  
J. H. Johnson  
J. H. Walker  
Clarence Whitmore  
John Brown, Jr.  
James Fields  
Horace Briscoe  
Hobson Nickson  
Calvin Tatum  
Quilla Darden  
Hugo Walker  
Edgar Sims  
Ernest Johnson  
William H. Monroe  
Donnie Boykins  
Gus Glosson  
Rufus Wooten  
Charles M. Lee  
Edward Dixon  
J. C. Clifton  
Roosevelt Walker  
Carl Desroe  
Lee Mackey  
George Craft  
W. H. Killough  
Curtis Jefferson  
William Washington  
James Porter

**EMPLOYEES' STATEMENT OF FACTS:** The daily schedule arriving time of Train No. 24 at Denison, Texas is 11:35 P.M. The daily arriving time of Train No. 6 at New Franklin, Missouri is 1:56 A.M. The daily schedule arriving time of Train No. 8 at Muskogee, Okla., is 11:10 P.M. The daily arrival time of Train No. 2 at Muskogee, Okla. is 10:10 P.M.

The Dining Car Waiters, Chefs and Cooks also Bus Waiters are "relieved" of their duties at 9:00 P.M., other than Train 2 which is 10:00 P.M., while en route to their respective points, according to the contention of the carrier, which is denied by the employees. Denison, Texas, Muskogee, Okla. and New Franklin, Missouri are turn-around or layover points for the crews.

The employees are not permitted to abandon the car at the respective release time but are required to proceed to the layover or turn-around points as the case may be so as to be available for service early the following morning or trip.

There is in fact, no physical release of the employees at the referred time "off duty en route" as indicated in the respective assignments. The employees are not required to show their passes to continue their trip after 9:00 P.M. and until arrival at layover points.

The employees are "on duty" until their actual and physical release occurs when the train arrives at the designated layover points.

The crews do sleep on the cars at Denison, Texas, Muskogee, Okla. after the car is detached from the train.

Both the dining car schedule and the train schedule have changed several times since the claim was filed with the carrier. The submitted Dining Car Schedule Marked Exhibit A and B is the present assignments but do not meet the service requirements.

#### Authorities in support of Employees' Contention

This will certify that there is an agreement extent between the organization and the carrier dated at Dallas, Texas, on the 4th day of April, 1942, copy of which is on file with this Division of the Board:

service is necessary under the carrier's service requirements, and when such time is consumed in taking rest, cannot in any sense, be considered time actually worked, and not being time actually worked, it is not includible as time in the 240 hours contained in the monthly assignment. Note particularly Section (c), reading:

"(c) It is recognized that the railroad has the right to rearrange assignments as may be necessary at any time to avoid punitive overtime payments."

How empty for the carrier this provision would be if carrier is not granted this privilege of releasing the employee from duty when his services are not required and not include this release time in the monthly schedule.

That the carrier's interpretation of this rule is correct and that the employees have been correctly paid was acknowledged by the organization when they brought a similar action, which resulted in Award No. 2704, and failed to include this claim, as the carrier was at that time eliminating from the hours of the assignment for rest, those hours after 9:00 or 10:00 p.m. when there was no service requirements, as it has a right to do under the terms of the working agreement. One of the material allegations in the employees' claim in Award 2704, was that for the two trains concerned, "The crew does not sleep on the car at Kansas City or San Antonio", and this shows their interpretation to be, the time should be eliminated from hours in schedule assignment when released from duty and slept on cars.

The employees knew at the time they accepted service on dining car that they would be on trains for extended periods of time and that a portion of this time, they would be released from duty without pay for the purpose of relaxation and rest; that they would be transported from place to place in order for the carrier to utilize their services at times and places necessary for its service requirements; and they desired to be transported from place to place to make themselves available to perform these dining car services in accordance with the carrier's service requirements. These conditions are inherent in the work they chose to follow for their means of livelihood. When then these employees accepted dining car service, they accepted it under these conditions, and they should not now be permitted to complain or except to these conditions of employment.

Award 2704 has no application in this case. June 30, 1945, the organization requested an interpretation of Award 2704, seeking to have the Board rule that Award 2704 covered the matter complained of by the organization in this case. Answer of the carrier was filed with the Board, July 21, 1945, and on July 31, 1945, the employees sought to have this case dismissed, which was done by the Board's letter, reading:

"We acknowledge receipt of your letter of July 31, copy of which we note has been furnished the carrier, in which you inform us that it is your wish to withdraw request for interpretation of Award 2704, docket DC-2740.

"Be advised the records of the Third Division have been closed in the matter."

Inasmuch as the records of the Third Division have been closed in the matter, it is not understood how the matter can be reopened for hearing at this late date. This action of the Board was a final determination of the matter.

The carrier respectfully requests that the Board require as precedent to the maintenance of this action that each and every one of the employees listed as claiming, file with the Board a good and sufficient power of attorney, authorizing and empowering the organization to represent them in this action.

**OPINION OF BOARD:** The record shows that Train No. 24 arrives at Denison, Texas, at 11:35 p.m.; Train No. 6 arrives at New Franklin, Missouri at 1:56 a.m.; Train No. 8 arrives at Muskogee, Oklahoma, at 11:10 p.m.; and

Train No. 2 arrives at Muskogee, Oklahoma, at 10:10 p.m. Dining Car waiters, chefs and cooks are relieved of their duties at 9:00 p.m., except on Train No. 2, when they are relieved at 10:00 p.m. Denison, Muskogee and New Franklin are turn-around or layover points for these employees. These employees are required to remain on their trains until arrival at turn-around and layover points in order to make return trips from those points on the following morning. At Denison and Muskogee, these employees sleep in their cars after they are detached from the train. It is the contention of the employees that they are not actually released from service until arrival at turn-around or layover points.

The rules of the current Agreement applicable to the present dispute are:

"Two hundred forty (240) hours or less in regular assignment will constitute a month's work for regular employees ready for service the entire month and who lose no time on their own account. Employees temporarily detached from regular assignment at company's request shall not suffer loss of pay. Employees will be advised of their hours of service in regular assignment." Rule 2(a), current Agreement.

"Employees 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, 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; plus not to exceed three periods daily of fifteen (15) minutes each for meals. Employees assigned to special service such as home-seeker excursions, convention trips, etc., will be allowed eight (8) hours pay for each day when set out at away from headquarters point." Rule 2(b), current Agreement.

"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 (b) of this rule." Rule 2(c), current Agreement.

The meaning of the foregoing rules is clear. Employees within its scope are entitled to be paid for time used in making a trip, less deductions authorized by the Agreement. This simply means that assignments of hours of service thereunder must be terminated at or after the completion of the trip. The Carrier urges that the language of Rule 2(b), "except that actual continuous time, not required for service on any trip," excludes the time here claimed from the assignment. We held directly to the contrary in Award 2704. If that interpretation were accepted there would have been no need for the qualifying language immediately following it, viz: "at any layover, turnaround, set-out or terminal point." The quoted rules, considered as a whole, exclude actual continuous time not required for service on any trip which occurs at a layover, turnaround, set-out or terminal point. If any other result was intended, the Agreement does not indicate it.

The Carrier further contends that when the employees are released and permitted to sleep during the remainder of the trip, a distinguishing feature exists that makes Award 2704 inapplicable. But the Agreement does not authorize such time to be deducted where the employees are permitted to sleep any more than if they are not permitted to sleep. Under the Agreement as written, the rule is the same in either case.

The Carrier asserts that certain of the Claimants have no valid claims because of failure to comply with that part of Rule 7, Agreement effective May 1, 1942, providing:

"It is agreed that claims of employees which may arise under this agreement shall not be subject to monetary recovery unless presented within ninety (90) days from the date of events or circumstances on which the claim is based."

Under this rule, the Award can apply to no employe involved for more than ninety days prior to the filing of the claim. Since no claim is made which arose prior to December 19, 1944, the cut-off rule has no application. Employees in service after that date are entitled to the benefits of this Award.

**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 Employees 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 violated as charged.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.