

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Chef W. A. Maclean for an allowance of two hours on March 7, 1948, and all subsequent dates, and for all other chefs and cooks who reported for Train No. 3 or any other train at any point between the hours of 9 P. M. and 4 A. M. on March 1, 1948, and all subsequent dates, based on Rule 9 of the Chefs' and Cooks' Agreement effective March 1, 1948.

EMPLOYEES' STATEMENT OF FACTS: Passenger trains Nos. 3 and 4 are operated between St. Paul and Seattle; Train No. 3 leaving St. Paul at 9:10 P. M. A combination Cafe-Coach is assigned to Train No. 3 from St. Paul to Spokane and on Train No. 4 from Spokane to St. Paul; train No. 4 leaving Spokane at 9:25 P. M. There is a kitchen in one end of this cafe coach and a dining compartment adjoining the kitchen which contains six tables and seats 18 persons at one setting.

One cook is employed in the kitchen of the Cafe Coach. This Cook reports at St. Paul for train No. 3 at 9 P. M. after boarding the train goes into the kitchen of the cafe coach and performs certain services in preparation for the serving of the next day's meals.

The Carrier does not provide sleeping accommodations for the Cafe-Coach Cook in the Pullman Car that is carried on this train, and therefore, after boarding train No. 3 which is due to depart at 9:10 P. M. and performing certain kitchen duties, the Cook, in accordance with instructions issued by the Carrier, takes down a table in the dining compartment and gets a spring with mattress, pillows, blankets and sheets out of a locker and places the spring on four chairs and then completes making the bed with sheets, blankets and pillows; he then hangs up a curtain between the aisle and the bed that is made up on chairs due to the fact that passengers and the train crew walk through the dining compartment of this car. For reporting at 9:00 P. M. and services performed, the cafe-coach cook is paid from 9 P. M. to 10 P. M.—a total of one (1) hour.

The Cafe Coach Cook reporting at Spokane at 9:00 P. M. for Train No. 4 which is due to leave at 9:25 P. M., performs identical service in the kitchen and in connection with making up his bed in the dining compartment of the cafe coach. For reporting at 9 P. M. and services performed after reporting, this cafe coach cook is paid from 9 P. M. to 10 P. M., a total of one (1) hour.

Passenger trains Nos. 50, 51, 1 and 2 (known as the North Coast Limited) are operated St. Paul to Chicago; Chicago to Seattle and return to St. Paul.

The work assigned to chefs and cooks involves the preparation of food. The facts show that on none of the trains involved in this dispute are the chefs and cooks required to prepare food after reporting at the respective terminals. It is perfectly plain, therefore, that these employees are not being worked within the meaning of Rule 9 after reporting for these trains.

While the Employees may argue that the preparation of sleeping accommodations on trains Nos. 3 and 4 or placing sheets and slips on beds on the North Coast Limited is work performed within the meaning of Rule 9, this contention is untenable. The preparation of sleeping accommodations is something that is not required by the Railway Company in the conduct of its business and neither is this something that is required by the Railway Company in its service to the public. Therefore, in any view of this case it cannot consistently be said that these employees are being worked within the meaning of Rule 9 after reporting for trains Nos. 3 and 4 and the North Coast Limited at the respective terminals.

The next question to be determined in the application of Rule 9 is whether chefs and cooks after reporting for trains Nos. 3 and 4 and the North Coast Limited at the respective terminals are being held for sleeping accommodations to be made available. The term "available" as used in Rule 9 is defined in the note as meaning available at the station from which the train is scheduled to depart. This definition of the term "available" is significant. It specifies the location at which sleeping accommodations must be available and simply means that sleeping accommodations must be available at the station from which the train is scheduled to depart. This is all the parties to the agreement had in mind in using the word "available" in formulating Rule 9.

The Cafe Coaches assigned to trains Nos. 3 and 4 and the Dormitory cars assigned to the North Coast Limited are available at the station when employees report for such trains at the respective terminals and sleeping accommodations are available in these cars. Sleeping accommodations are therefore available to the employees assigned to these trains within the meaning of Rule 9 and consequently these employees are not being held for sleeping accommodations to be made available.

The chef assigned to trains Nos. 3 and 4 is now being allowed payment of one hour from 9:00 P. M. to 10:00 P. M. on the day of departure from St. Paul and Spokane, which allowance is proper under Rule 8(b). To now allow this employee payment of an additional two hours, to say the least, would not be supported by the language of Rule 9 nor by the intended application of that rule at the time it was negotiated.

The Carrier has shown that the chefs assigned to trains Nos. 3 and 4 and the chefs and cooks assigned to the North Coast Limited are not being worked or held for sleeping accommodations to be made available after reporting at the respective terminals for these trains and that the claim for additional compensation is not sustained under Rule 9. This claim should therefore be denied.

OPINION OF BOARD: Resolution of this dispute requires the interpretation and application of Rules 8 and 9 to the involved circumstances, particularly in respect to the emphasized portion of Rule 9 which reads:

"Rule 9. Employees required to report for trains which are scheduled to depart between the hours of 9:00 P. M. and 4:00 A. M., where sleeping accommodations are available aboard the train or in cars detached from the train, shall be paid at the pro rata rate for time actually worked or held for sleeping accommodations to be made available, with a minimum of two (2) hours." (Emphasis added.)

The record shows almost total disagreement between the parties as to the intent of Rule 9 when adopted, as well as the pertinent facts necessary for a proper disposition of the dispute under the emphasized portion of the

rule. This leaves the Board in no position to render an award thereon; therefore, the claim should be remanded to the parties for further handling on the property.

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 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 claim will be remanded to the parties for further handling.

AWARD

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of April, 1949.