

Award No. 5405

Docket No. DC-5236

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim Joint Council Dining Car Employees, Local 495, on the property of the Seaboard Air Line Railway, for and on behalf of C. C. Chapman, Chair Car Attendant and all other employees similarly affected that they be compensated for eight (8) hours at their pro rata hourly rate for each trip made on Train 21-22, since July 14, 1949.

EMPLOYEES' STATEMENT OF FACTS: Since July 14, 1949 Claimant and all other Chair Car Attendants similarly affected operating on Train 21-22 have not been permitted by Carrier to receive four (4) hours unaffected rest during the hours of 10 P. M. and 6 A. M. Carrier's operating schedule for Train 21 sets arrival time in Columbia, South Carolina, at 11:20 P. M. and in Jacksonville, Florida, at 4:00 A. M. The operating schedule of Train 22, northbound, indicates arrival at Columbia, South Carolina, at 12:15 A. M. In accordance with Carrier's instructions governing Chair Car Attendants, two Attendants must be on duty at all times, therefore both attendants regularly assigned to said trains are required to be on continuous duty to take care of the five Chair Cars in the consist of these trains.

Under date of August 11, 1949 Organization submitted the instant claim to Carrier. This claim submitted was denied under date of September 16, 1949 by Carrier's Superintendent Dining Cars. Under date of September 27, 1949 claim was appealed to Carrier's Director of Personnel, the highest official of Carrier designated to handle appeals. Under date of October 18, 1949 Carrier's Director of Personnel sustained position of General Superintendent Dining Cars in declining claim.

Rule II (c) provides, insofar as it is applicable here:

"Employees in regular assignment shall be considered on duty from time required to report and so report until released from duty as designated in schedule for dining car crews. . . ."

Rule II (g) which covers a situation similar to the instant claim provided as follows, insofar as it is applicable here:

...
"If deadheading movements between the hours of 10 P. M. and 6 A. M. do not permit a four (4) hours sleep where sleeping accommodations are available, actual deadhead will be paid. Employees who deadhead in coaches or on other trains where sleeping accommodations are not provided will be paid actual time for deadheading between the hours of 10 P. M. and 6 A. M. . . ."

While it is true that the Book of Rules Governing Coach Car Attendants does provide that two car attendants will remain on duty at all times during night hours, it contains the further provision that hours off duty at night will be designated by the Passenger Service Agent. It was with full knowledge and concurrence of carrier's Passenger Traffic Manager that only one attendant was held on duty between 10:00 P. M. and 6:00 A. M. on certain dates when, in the judgment of Passenger Service Agent, conditions justified this. As previously stated, it is prerogative of management to supersede these instructions by special instructions as the necessity or desirability arises. Certainly, this book of rules governing coach car attendants imposes no penalty compensation to such employes by the carrier when only one attendant is held on duty between 10:00 P. M. and 6:00 A. M. The December 1, 1943 agreement simply provides for payment of continuous time where four hours rest periods are not granted the attendants between the hours 10:00 P. M. and 6:00 A. M., and carrier respectfully submits that this has been done in all cases. The book of instructions, as shown in Carrier's Statement of Facts, places these coach car attendants under the jurisdiction of the Passenger Service Agents, therefore it is of no concern to the employes so far as having two attendants on duty at all hours of the night is concerned, when one of the two attendants assigned to Trains 21-22 is instructed by the Passenger Service Agent, his immediate superior, to remain on duty between 10:00 P. M. and 6:00 A. M. When he is so held and compensated therefor on continuous time basis, all provisions of the agreement between carrier and the organization have been fully met.

We repeat, there is no just basis for the claim as presented by the employes, in the absence of any specific case, or cases, where the employes were held on duty between 10:00 P. M. and 6:00 A. M. and required to perform service for which they were not properly compensated, and in consideration of the above facts carrier respectfully requests that this claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Employes rest their case on the following statement:

"Since July 14, 1949 Claimant and all other Chair Car Attendants similarly affected operating on Train 21-22 have not been permitted by Carrier to receive four (4) hours unaffected rest during the hours of 10 P. M. and 6 A. M. Carrier's operating schedule for Train 21 sets arrival time in Columbia, South Carolina, at 11:20 P. M. and in Jacksonville, Florida, at 4:00 A. M. The operating schedule of Train 22, northbound, indicates arrival at Columbia, South Carolina, at 12:15 A. M. In accordance with Carrier's instructions governing Chair Car Attendants, two Attendants must be on duty at all times, therefore both attendants regularly assigned to said trains are required to be on continuous duty to take care of the five Chair Cars in the consist of these trains."

The Employes in support of this statement that the claimant and all others similarly affected are not permitted to secure four hours' rest between the hours of 10:00 P. M. and 6:00 A. M., rely principally on the schedule of the trains involved and that part of Carrier's instructions governing Chair Car attendants which reads:

"* * * At least two Car Attendants will remain on duty at all times during the night hours * * *."

However, the Employes ignore the fact that the same instructions provide—"Hours off duty at night will be designated by Passenger Service Agent."

The Carrier states that it has always paid continuous time in the case of employes who have not had four hours' rest between the hours of 10:00

P. M. and 6:00 A. M., in accordance with Rule II (g), and its time records, unchallenged by the Employees, indicate that proper payment has been made in such instances on these runs.

The Carrier indicated willingness to so compensate any others involved in this dispute provided the Employees would identify those who were improperly paid, to which, so far as can be determined from the record, the Employees made no response.

In the absence of any showing that either the Carrier's instructions governing chair car attendants or the manner in which they are applied is inconsistent with some rule or rules of the parties' working agreement, we conclude that the claim is without merit and 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 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 claim is without merit and will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of July, 1951.