Award No. 7867
Docket No. DC-7567

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 385

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Time Claim of Joint Council Dining Car Employees Union, Local 385, for and on behalf of Earl Morch, second cook, and all employes similarly situated on the property of Chicago, Milwaukee, St. Paul & Pacific Railroad Company for two hours time, Train 4, Diner 171, June 19, 1954; failure to pay said time being a violation by said Carrier of Schedule Rule 2(f) of current agreement.

EMPLOYES' STATEMENT OF FACTS: On June 19, 1954 claimant was assigned to Diner 171, Train 4 from Minneapolis, Minnesota to Chicago. Said train was late arriving in Chicago resulting in claimant not being released from service until 12:00 noon on said date. Scheduled time for arrival of said train at Chicago is 10:00 A. M. Claimant was required to report for duty on Train 7 at 2:00 P. M. on said date. Schedule rule 2(f) of the current agreement provides:

> "Time will be counted as continuous for each trip from the time required to report for duty until released from duty, except that actual continuous time authorized for rest on trip or at layover, turnaround, set-out or terminal points will be deducted from the continuity of time in all cases where the interval of release from service is three (3) hours or more."

POSITION OF EMPLOYES: Employes contend that the clear meaning and the interpretation which both the Carrier and the Organization have given Rule 2(f) in the past, make it mandatory for Carrier to pay continuous time to claimant in the instant claim. The facts in the instant claim cannot be controverted. The claimant had less than three hours of interval of release from service at Chicago, a terminal point. Therefore the clear language of the rule necessitates according claimant continuous time for the interval of release which was two hours.

Rule 2 (f) was taken without change in any particular whatsoever from the agreement effective June 1, 1947 and embodied in the current agreement effective September 1, 1949. Subsequent to June 1, 1947, the Carrier and the Organization have interpreted Rule 2(f) to mean exactly what the Organization contends its meaning is in the instant claim. Carrier's time records since June 1, 1947 will reveal that crews arriving late at Chicago on Trains 22 were

"This Board has frequently sustained claims of employes on a current basis where for years a practice inconsistent with the clear terms of an Agreement has been followed on the property. So here, the failure of Management to act in conformity with the clear language of the exception contained in this Agreement does not foreclose it from conforming its action to the unambiguously expressed intention thereof."

Thus, any alleged failure of the carrier to apply the rule properly in the past cannot be relied upon where there is a rule so clearly and unambiguously supporting the carrier's position as is the case in this dispute.

Rule 2 (f) clearly shows that time elapsing in between trips is not to be considered in computing an employe's time on a continuous time basis. It is undisputed that the time claimant spent in Chicago after being released from duty from No. 4 until reporting for duty on No. 7 was in between trips. Thus, the claim is clearly without merit and should be denied.

All data has been made known to the organization and conference has been held on the property.

OPINION OF BOARD: The confronting claim comes before the Board on the allegation that the Respondent violated Rule 2 (f) when it failed and refused to compensate Claimant on a continuous time basis when he (Claimant) was granted less than a three-hour interval from service. Rule 2 (f) provides:

"Time will be counted as continuous for each trip from the time required to report for duty until released from duty, except that actual continuous time authorized for rest on trip or at layover, turnaround, set-out or terminal points will be deducted from the continuity of time in all cases where the interval of release from service is three (3) hours or more."

The parties are in agreement as to essential facts. On the date in question, Claimant, a second cook, was assigned to a train operating between Minneapolis, Minnesota, and Chicago, Illinois, which arrived two hours later than its scheduled arrival time of 10:00 A. M., that is, 12:00 noon. Claimant was required to report and cover assignment on another run, departure time, 2:00 P. M.

The Organization took the position that inasmuch as Claimant was afforded less than a three-hour interval of release (in this instance two hours) as provided in the above quoted rule, compensation on a continuous time basis was mandatory. It was further pointed out that the Respondent had, without exception, paid similar claims, such practice having been in existence both prior and subsequent to the effective date of the current Agreement.

The Respondent asserts that the Organization is here attempting to expand the coverage of Rule 2 (f) to cover hours or time "between trips" rather than for "each trip" as provided therein, and in so doing, is failing to recognize the distinction between being "released from service" which must be of three or more hours' duration continuous with each trip; and being "released from duty" at the end of such trip. While admitting that it had in the past paid numerous claims similar to the confronting one, the Respondent asserted that such past practice should not be considered where, as here, the plain and unambiguous language of the rule does not require such payment.

The record reveals that, as the Organization asserts, a Rule similar to 2 (f) was contained in a prior Agreement, and that Rule 2 (f), as it presently appears, was incorporated in the current Agreement without protest or question as to its meaning or proper application.

We are not constrained to find that Rule 2 (f) is clear and unambiguous to the extent of being susceptable to one, and only one, interpretation.

The record reveals, and Respondent admits, that claims covering the identical subject matter and factual situation as are here present have been allowed in the past. This practice has apparently been carried on without interruption during the entire period of the current Agreement. Thus the parties here, by their own actions, have interpreted the Rule, and adopted that which they consider to be a proper definition.

In accordance with prior decisions of the Board, we will here again adopt the parties' definition and interpretation of the Rule involved.

For the reasons stated, the claim is meritorious.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1957.