Award No. 7870
Docket No. DC-7792

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union, Local 351 for and on behalf of William Ross, Aubin Lee, David McClelland, J. L. Thomas, Clarence D. Murphy, Robert L. Hendricks, Irvin Austin, C. E. Cowan and Fred Dobson, and other employes similarly situated that they be paid the difference of what they were paid and what they should have been paid on Train No. 9, departing Chicago, Illinois, June 25, 1954 on the property of the Chicago & Eastern Illinois Railroad Company for failure of carrier to provide proper quarters or in lieu thereof paid continuous time in violation of Rule 2 and Rule 14 (g) of the current agreement.

EMPLOYES' STATEMENT OF FACTS: On June 25, 1954, carrier's Train No. 9 departed Chicago with dining car car crew consist of William Ross and the other named claimants and other employes similarly situated (hereinafter for convenience collectively referred to as "claimants") as the regularly assigned crew. Included in the equipment on this train was a dormitory car for use of claimants, among other employes. At about 10:00 P. M., June 25, 1954, claimants went to the dormitory car for the purpose of retiring and found that the temperature in the dormitory car was so high as to prevent their entering the car (Exhibit A, affidavit of Irvin Austin, Exhibit B of Clarence D. Murphy, both Exhibits attached hereto). Claimants immediately informed the steward assigned who in turn immediately informed the tran conductor of the condition of the dormitory car. The dormitory car was not again able to be used because of the high temperature in the car until on or about 9:30 A. M., June 26, 1954 (Exhibit C, affidavit of Robert L. Hendricks, attached hereto).

It is apparent that the cause of the inability of the claimants to use the dormitory car for its intended purpose was the failure of the air-conditioning unit installed in that car. Apparently, an attempt was made to correct the failure of the air-conditioning unit in the early mornng of June 26, 1954, but the defect was not corrected until above stated. (Exhibits A, B, and C attached hereto).

Carrier's Superintendent of Dining Car Service was advised of the condition of the dormitory car as above described on the following day and asked by the steward whether continuous time should be shown for the dining car crew. He instructed the steward not to show continuous time (Exhibit B attached hereto).

The rules do not require that such facilities be air conditioned, nor is there any penalty prescribed for a failure to provide such facilities, or to have them air conditioned if they are provided.

The pertinent portion of Rule 2, cited by the organization, provides the formula for determining time on duty. It provides that "time authorized for rest enroute" shall be deducted from the time on duty. The crew here in question were given authorized time for rest in accordance with the rule. Authorized time off for rest is not dependent upon "sleeping accommodations," as illustrated in the case of a crew released at 10:00 P. M. who arrive at their terminal at 11:30 P. M. They would not require or use "sleeping accommodations."

The facts are that claimant crew—were released for rest enroute in accordance with the rule. Claim for compensation for time released from duty enroute is without merit under the agreement rules here controlling and should be denied accordingly.

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting claim is brought in behalf of nine named claimants and other employes similarly situated that they be made whole account of Carrier's failure to provide proper quarters on Train 9, Chicago, Illinois to Miami, Florida, or compensation on a continuous time basis in lieu thereof, as required by Rules 2 and 14 (g).

Pertinent portions of these rules provide:

Rule 2.

> "Employes' time shall be computed from time required to report for duty at an initial terminal until finally relieved from duty, except the time authorized for rest enroute after 10:00 P. M. and before 6:00 A. M. shall be deducted. * * *"

Rule 14 (g).

> "Employes in service * * * will be furnished * * * sleeping accommodations when such accommodations are available in railway owned equipment on the trains on which the service * * * is performed * * *."

The Organization asserts that Rule 14 (g) contemplates that Carrier will furnish "useable" sleeping accommodations, but that in this instance such conditions did not prevail inasmuch as there was an air conditioning failure on the dormitory car on the run in question; for which reason Claimants were unable to obtain the authorized rest provided for in Rule 2. It was pointed out that it is evident that Rule 2 contemplates payment on a continuous time basis when such rule is considered in conjunction with Rule 3 which provides for payment on a continuous time basis where, when employes are deadheading no no sleeping accommodations are furnished.

The Respondent took the position that all Claimants were released for rest at 10:00 P. M. according to schedule and that while Rule 14 (g) does not require that sleeping accommodations be made available, such were available on the train and at the time in question. It was asserted that an investigation did not substantiate the charge of defective air-conditioning. It was pointed out that even though no accommodations had been made available Rule 2 provided no penalty.

We cannot read into Rule 14 (g) any requirement that sleeping accommodations be furnished under conditions which prevailed here. Their (accommodations) availability is permissive rather than mandatory. Here accommodations were available. Whether or not they were "useable" is questioned by Claimants. While there is a conflict in the record on this point it is noted that

at least one member of this crew made use of the sleeping quarters without apparent discomfort. Likewise we do not think that Rule 2 contemplates payment on a continuous time basis under these conditions. To so interpret this rule would have the effect of reading into the rule that which is not there.

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 Agreement was not violated.

AWARD

Claims denied.

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.