Award No. 7910
Docket No. DC-7919

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 370

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 370 on the property of the New York, New Haven and Hartford Railroad Company for and on behalf of E. L. Joseph, Arthur Carter, A. L. Baynard and Lee Mitchell that they be paid their monthly guarantee for the month of February, 1954.

EMPLOYES' STATEMENT OF FACTS: At all times material hereto Claimant E. L. Joseph was regularly assigned as chef on Carrier's train 22 and 23 in February, 1954, Claimant Arthur Carter was regularly assigned second cook on that crew, A. L. Baynard as third cook and Lee Mitchell as waiter. On February 27 and 28, 1954 which were regularly scheduled lay-off days on said assignment, Carrier called claimants for extra service on Trains 27 and 28. Carrier refused to pay claimants for their monthly guarantee of 205 hours for February, 1954 upon claimants' refusal to work on their relief days of February 27 and 28, 1954.

Rule 1 of the current agreement as applicable here provides as follows:

"RULE 1—BASIC MONTH'S WORK

(Par. 1) Two hundred and five (205) hours of service in a calendar month in regular assignment shall constitute a basic month's work.

(Par. 5) An employe fulfilling a month's regular assignment of less than two hundred and five (205) hours will be paid the monthly rate fixed for the class of work performed."

"RULE 7—RELIEF PERIODS

Employes in regular assignment will be allowed four (4) days off duty in cycles of twenty-four (24) hours at designated home terminal each calendar month. Each period of twenty-four (24) consecutive hours of such scheduled off duty time at designated home terminal will constitute one day."

POSITION OF EMPLOYES: Carrier has misconstrued the application of the applicable rules of the current agreement to the instant claim. In

"RELIEF PERIODS

"All regularly assigned employes shall be guaranteed at least six (6) calendar days off duty each month at their designated home-terminal.

"Employes properly called for service on any of their relief days shall be paid at the rate of time and one-half for all hours worked. Such premium pay shall be paid in addition to compensation due them under any other provisions of the agreement."

As the text of the rule makes clear, this proposal would have contemplated compensation at the overtime rate for regularly assigned employes called on layover days. Such compensation would not be credited to the monthly guarantee.

The negotiations that followed resulted in the agreement of October 1, 1953, presently in effect in which the former rule was retained and the proposal quoted next above was withdrawn.

We, therefore, respectfully submit that on the basis of the rules as worded, practice thereunder, and the history of the negotiation of the current agreement the present claim is without merit and should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting claim concerns the request of four named individuals, each a member of a dining car crew, assigned to trains 22 and 23. New York, N. Y., to Boston, Mass., and return; that each be granted compensation at the basic monthly rate for the month of February, 1954, without deduction of any kind.

The Organization took the position that even though the regular assignment of Claimants was 192 hours of service they were entitled to receive their full compensation based on 205 hours inasmuch as each fulfilled his monthly assignment. It was pointed out that Claimants were not here required to perform the extra work in question, in order to receive pay for 205 hours inasmuch as Rule 7 of the effective agreement provides for the granting of 4 off duty days consisting of 24 hours each, during a calendar month, and that if required to perform this extra work, the 4 off duty days would not have been still available.

The respondent asserted that Claimants could not properly refuse to perform the extra work requested of them, and still be entitled to receive monthly compensation based on 205 hours in view of the plain and unambiguous provision of paragraph 3 of Rule 1, wherein, and whereby all employes are required to be available for service the entire month. It was pointed out that this portion of Rule 1 provides for a reduction in the basic compensable month to the extent and under the conditions enumerated therein.

We are of the opinion that under the facts and circumstances of this record that paragraph 3 of Rule 1 is controlling here. While admittedly there is a conflict between the cited rules of the agreement as they might be interpreted, we are mindful of the fact that the parties have over the years given a meaning to, and placed an interpretation upon this rule that has expressed the parties intent. There is evidence that this rule or one substantially the same has been in the agreement (with modifications not here pertinent) over a long period of time. Likewise the parties gave weight to the Carrier's present application of the Rule when they (parties) agreed

that while "make up time" could be required, such "make up time" was to be limited to dining car service. In Award 4493 we stated:

> "* * * The Board has repeatedly held that where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself."

For the reasons stated this claim lacks merit.

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 hold:

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 did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May, 1957.