Award No. 9080
Docket No. DC-7516

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES—Local 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes, Local 849 on the property of Chicago, Rock Island and Pacific Railroad Company for and on behalf of A. Penn, chef cook; R. Chambers, second cook, Bryant McClain, third cook; that they and each of them be paid for the time they were required to appear for an informal investigation on March 12, 1954.

EMPLOYES' STATEMENT OF FACTS AND POSITION: It appears that on February 25, 1954 garbage was thrown from train 507 when crossing the Mississippi River at Inver Grove. Said garbage fell on an automobile on the lower deck of the bridge and splattered it badly.

Subsequent to that incident, the claimants were required to appear for an informal investigation and pay was requested by them for time spent at the investigation. Such pay was refused by the carrier.

Claimants contend that where employes are required to appear at investigations of this type on days they would not normally be required to perform any service for the carrier, or on their layover days, such time used should be given them in the form of pay. The failure to pay these claimants for the time spent at the investigation is in violation of the current agreement between the parties.

Attached hereto is the correspondence passed between this organization and the carrier in an attempt to correct this matter.

CARRIER'S STATEMENT OF FACTS: Claimants were members of a Dining Car crew assigned to Trains 507 and 508 operating between Minneapolis and Houston. Claimants arrived at Minneapolis on March 11, 1954 on Train 508 and departed on Train 507 on March 15, 1954. On March 12, 1954, Claimants made statements to Assistant Superintendent of Dining Cars Coleman at Minneapolis in connection with a complaint received that garbage had been thrown from Train 507, February 25, 1954, when crossing the

Had discipline been assessed, then employes were entitled to avail themselves of the remaining provisions of Rule 11 of the Agreement and request a hearing and if, on the basis of the hearing, the discipline was withdrawn and they appeared as witnesses and lost any time, they would be compensated for all hours of service lost, if any. This brings into significance the second part of Rule 11(g), which definitely states that payment shall be made for all hours of service lost. As pointed out by Carrier's Statement of Facts, these employes lost no service. Since they lost no work, the Carrier is under no contractual obligation to pay these employes for time consumed in making any statements on March 12, 1954 concerning complaint about their activities on February 24, 1954. This Carrier has never paid dining car employes for making statements of the above described nature nor has it ever paid them for appearing as witnesses unless they actually lost any hours of service.

Your Board has on numerous occasions considered claims of this nature and in many Awards, based on similar rules and facts, have declined claims such as that which is herein made by the dining car employes.

We also refer you to Awards 2512, 2778, 2842, 3089, 3230, 3343 and others.

In order to sustain the claim, it will be necessary for your Board to write into the agreement provisions and interpretations which the parties have not negotiated. This your Board has repeatedly held that it lacks the authority to do.

When employes file claims asking for additional time, they should be able to point to some rule in their agreement which specifically provides for additional payment. Employes have not cited a rule which provides for payment of the time claimed.

Because no basis exists in the agreement, namely that Rules 2(b) and 3(b) apply only to work of the nature normally performed by the claimants and Rule 11, which applies only to witnesse **who lose time** as a result of attending investigations, this claim has been declined on the property and we request your Board to uphold this declination.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made by employes for compensation from Carrier for time expended in appearing before Carrier for investigation on March 12, 1954. Rule 2(b), Rule 3(b) and Rule 5(b) cited by the employes have no application to the facts of record before us, nor does Rule 11 lend any support to the employes to justify a sustaining award.

On the facts and record here, the claims are without merit and should be denied.

In view of the foregoing opinion, it is not necessary to make any decision as to the contentions of Carrier relating to time limit rules.

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 Carrier did not violate the Agreement.

AWARD

Claims denied as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1959.