Award No. 9803
Docket No. DC-9336

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL 849

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Time claim of JOINT COUNCIL DINING CAR EMPLOYES LOCAL 849 on the property of the CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY for and on behalf of WAITER J. Q. OLIVER regularly assigned Trains 3 and 4 that he be paid at the rate of one and onehalf times the regular pay for thirteen hours of deadheading having been accumulated in the month of July 1955; said hours being considered service hours in excess of monthly guarantee as provided for in effective agreement.

EMPLOYES' STATEMENT OF FACTS: Under date of September 8, 1955 Organization's General Chairman submitted time claim on behalf of claimant that he be paid at the rate of one and onehalf times the regular pay for said hours accumulated in the month of July, 1955. (Employes' Exhibit A). Under date of September 14, 1955 Carrier's General Superintendent, Dining Cars denied the claim on the ground that Schedule Rule 7 and 8 of the effective agreement between the Organization and Carrier were not the controlling rules relative to payment for overtime but that the national overtime agreement effective September 1, 1949 controlled same; and further taking the position that the deadhead hours here performed by claimant was "time paid for but not actually worked" and, therefore, not considered as time worked for the purpose of computing overtime pay within the meaning of Article III, Paragraph (b)-1. (Employes' Exhibit B.) Under date of September 23, 1955 Organization appealed said decision of Carrier's General Supt. Dining Cars to Carrier's Manager of Personnel. (Employes' Exhibit C). The appeal was denied by Carrier under date of November 8, 1955. (Exhibit D). Carrier based its denial of appeal on the Memorandum of Agreement effective September 1, 1949 on overtime just as it had in the initial denial of the claim. Carrier conceded that deadheading is not specifically included in the five types of arbitraries, extra or special allowances which it was agreed would not be used for the purpose of calculating overtime pay but nevertheless it asserted it had long been understood that time paid for deadheading was the same as time paid for in the nature of arbitraries, extra or special allowances, as enumerated in Article III Paragraph (b)-1 of the Memorandum of Agreement effective Sept. 1, 1949.

POSITION OF EMPLOYES: The current agreement effective November 1, 1938, revised March 20, 1943 and further revised effective November 15, 1954 is on file with this Board and is incorporated herein by reference. Rule 8 is specifically applicable to the instant claim and provides as follows:

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 for payment of the difference between pay Claimant received for thirteen hours for deadheading having accumulated during the month of July 1955, at the time and one-half overtime rate, and the pro-rata rate of pay he was allowed by Carrier and as provided by Rules 7 and 8 of the effective Agreement of 1938, and subsequent revisions negotiated by the parties.

Carrier contends that the claim here is improperly before the Board for the reason the claim was not progressed here in accordance with the provisions of Rule 11 (g) as revised between the parties, effective November 15, 1954.

After a review of the record here, we conclude that Rule 11, as revised effective November 15, 1954, refers to discipline claims and has no application to the facts here for the reason that a time claim is here involved. Such claim here must be considered as subject to the provision of Rule 11½ made effective November 15, 1954. This rule has no requirement that a time limit is placed upon such claims as here to appeal to this Board as defined in Rule 11 (g) on which provision Carrier relies. Thus the rule upon which Carrier relies does not support its contention that the claim is not properly pending before this Board.

This Division has held in many cases that claims covering payment for deadheading time is for services rendered. Where no work is performed during this period involved, the proper rate is at the pro rata rate, such as the situation before us. Rule 8 was revised, effective November 1, 1945. Sections (a) and b (1) of the revised rule are applicable.

The claim here is not supported by the rules of the Agreement. See Award 7660. Carrier's Circular Letter No. 759, referred to by the Organization was not discussed on the property, and is not a proper part of the record before us, and is given no consideration by the Board.

Claim here is not supported by the record, 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 Employe involved in this dispute are respectively Carrier and Employe 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

Claim denied per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 2nd day of February, 1961.