

Award No. 9804

Docket No. DC-9337

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: Time claim of JOINT COUNCIL DINING CAR EMPLOYES LOCAL 849 on the property of the CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY for and on behalf of McNEIL TOLSON, W. CANNON, W. MACKLIN, J. POWELL & B. BEVERLY that these employees be paid time and one-half for all time in excess of 240 hours in the month of December, 1955.

EMPLOYEES' STATEMENT OF FACTS: On January 18, 1956 Organization's General Chairman submitted the instant claim to Carrier's General Superintendent Dining Car Department. (Employees' Exhibit "A"). Under date of January 19, 1956 that officer of the Carrier declined the claim on the ground that Article III of the agreement effective September 1, 1949 provided:

"Time actually worked in excess of 240 hours in a calendar month shall be paid for at the rate of time and one half the basic straight time rate. Time paid for but not actually worked shall not be considered as time worked within the meaning of this Article." (Employees' Exhibit "B")

On January 20, 1956 Organization's General Chairman appealed declination of the claim to Carrier's Manager of Personnel, the highest officer designated on the property to hear such appeals. (Employees' Exhibit "C"). Under date of February 20, 1956 Carrier's Manager of Personnel declined the appeal. (Employees' Exhibit "D").

The claim arises by virtue of the fact that claimants were properly authorized to deadhead in connection with the assignments issued by Carrier. Time accrued by claimants in the month of December, 1955 in their regular assignments total 240 hours. Deadhead hours properly authorized exceeded 240 hours.

POSITION OF EMPLOYEES: 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:

years before the consummation of the Agreement, effective September 1, 1949. In that Award, the Board held:

"It cannot have been intended to cover deadheading, which all agree is not service, in the sense that term is commonly used and understood. We think it may fairly be assumed, that, in entering into the Agreement, the parties thereto were fully cognizant of the distinction between service and deadheading and worded their agreement with that distinction in mind."

For all these reasons, the Carrier contends that the instant claim must be declined in the event your Board upholds the position of the Organization that it was submitted within the time limits prescribed by Article 11(g) of the current agreement. In so arguing, the Carrier does not retreat from its original position that this claim was not properly progressed to your Board within the time limits prescribed by Article 11(g) of the applicable agreement.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The facts and circumstances as shown by the Record, are similar to the facts and principles and Rules on which claim is based as shown by Award No. 9803, this Division.

In view of the foregoing, claim here 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 Employee involved in this dispute are respectively Carrier and Employee 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: S. H. Schulty
Executive Secretary

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