Award No. 9809

Docket No. DC-9558

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—Train 3: Joint Council Dining Car Employes on the property of the Chicago, Rock Island and Pacific Railroad Company in behalf of Waiter-in-Charge N. D. Austin, D. A. Green and Raymond McFarland, that they be paid seven hours overtime at their respective rates of pay; account Carrier not furnishing sleeping accommodations enroute in service as required by current agreement.

EMPLOYES' STATEMENT OF FACTS: Under date August 15, 1956 Organization submitted time claim on behalf of above named claimants for the reason that Carrier failed to furnish claimants sleeping accommodations after claimants finished their tour of duty July 30, 31, 1956. (Employes Exhibit A). It appears that the air conditioning unit in the dormitory car failed to operate on the night of July 30, 31, 1956. (Emp. Ex. B).

Under date August 15, 1956 Carrier's Superintendent Dining Car Department denied the claim. (Emp. Ex. C) Carrier took the position in handling on the property, that despite the fact that the air conditioning unit was not working in the dormitory car and the temperature in the car was between 100 and 110 degrees, the fact that the dormitory car was physically present in the consist of the train, although it could not be used for sleeping purposes, was basis for denial of claim. Under date September 25, 1956 Organization again requested Carrier's Superintendent Dining Car Service to reconsider his denial. (Em. Ex. D). Under date October 1, 1956 that official reaffirmed his denial of the claim and reiterated Carrier's position that the Carrier does not guarantee that the dormitory car will be air conditioned. (Em. Ex. E).

Under date October 9, 1956 denial of the claim was appealed to Carrier's Manager of Personnel, the chief operating officer designated to consider such appeals. (Emp. Ex. F). Under date December 3, 1956 that official denied the appeal. (Emp. Ex. G).

In an exactly similar situation occurring on October 5, 1953 on train 15, Carrier instructed crew who was not able to use a bad ordered dormitory car, to set up in coach and turn in time slips for overtime. (Emp. Ex. H).

POSITION OF EMPLOYES: The current agreement between the parties hereto is the agreement effective November 1, 1938 as revised March 20, 1943

Every effort possible is made to see that air conditioning on all equipment operates properly. However, as happens in a number of instances, the air conditioning will at times fail on Pullman cars, dining cars, coaches, etc. While it is unfortunate that our passengers have to suffer in such instances, they obtain no refunds and are required to ride in warm cars due to the mechanical failure.

When Train No. 3 departed from Chicago on July 30, 1956, the air conditioning was functioning properly on the dormitory car and due to mechanical difficulties, the air conditioning ceased to function properly and the car became hot enroute.

In the handling of this claim on the property, the employes claimed that claimants should have been furnished other sleeping accommodations in equipment not owned by the railroad. Rule 14(f) does not obligate the Carrier to provide accommodations enroute to the employes in equipment not owned by the Carrier and thereby exclude revenue passengers on the train.

The provisions of Rule 14(f) are clear and capable of only one construction. Employes will be furnished sleeping accommodations while enroute in service or while deadheading by order of the company, **"when such accommodations are available in railway owned equipment."** Such accommodations were furnished. There is no provision that such equipment must be air conditioned. Nor is the Carrier subject to penalty claims at either straight time or punitive rates in case the air conditioning, if provided, fails enroute.

Inasmuch as accommodations were available on the train in railway-owned equipment as provided for in Rule 14(f), there was no violation of the applicable agreement. The Carrier has declined the claim for lack of support in the applicable agreement and respectfully requests your Board to so hold.

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

OPINION OF BOARD: Dormitory car was furnished on the trains in question. While enroute the air conditioning equipment failed allegedly causing the car to become too hot for occupancy by Claimants. It is not charged that failure of the air conditioning was due to any negligence on part of Carrier. On the contrary, it stands unrefuted that every effort possible is made to see that air conditioning equipment in these cars operates properly. On the basis of the facts and circumstances contained in the record we fail to find any violation of Rule 14 (f) of the parties Agreement.

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

Claim 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.