Award No. 10248
Docket No. PM-10932

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of Waiter-In-Charge B. J. Munchus, Chef Cook L. V. Lewis, Second Cooks Dennis Robinson and Willie Metcalf, and Pantryman Waiter Marshall Gent, who are now, and for some years past have been employed by the Fort Worth and Denver Railway Company in the various capacities set forth above.

Because the Fort Worth and Denver Railway Company did, through Mr. C. W. Ruffner, Assistant to General Manager, finally deny the claim filed for and in behalf of the above-mentioned employes under date of July 23, 1958, in which claim the Organization maintained that the above-mentioned employes should have been additionally compensated for the hours stipulated in the original Statement of Claim (7 hours and 15 minutes) on trips as stipulated in original letter of claim dated June 1, 1958 (Trip of May 9-10, 1958; trip of May 12-13, 1958; and trip of May 15-16, 1958) as it is provided for in Rule 12 of the Agreement governing the wages and working conditions of the class of employes of which the above-mentioned individuals are a part.

And further, for the above-mentioned employes to be paid for the hours stipulated in said claim.

EMPLOYES' STATEMENT OF FACTS: Your Petitioner, the Brotherhood of Sleeping Car Porters, respectfully submits that it is authorized to represent all employes of the Fort Worth and Denver Railway Company classified as dining car employes, working under the jurisdiction of the dining car service.

Your Petitioner further sets forth that in such capacity it is duly authorized to represent Waiter-In-Charge B. J. Munchus, Chef Cook L. V. Lewis, Second Cooks Dennis Robinson and Willie Metcalf, and Pantryman Waiter Marshall Gent, who are now, and for sometime past have been, employed by the Fort Worth and Denver Railway Company in the capacities set forth above.

Your Petitioner further sets forth that in line with their regular duties these men were assigned to deadhead on Train #8 from Fort Worth on May 9-10, 1958; May 12-13, 1958; and May 15-16, 1958, leaving Fort Worth at 10:45 P. M. for the purpose of going on duty the following morning at 6:00 A.M.

Exhibit No. 4, was in reply to Mr. Cobel's letter to them of July 1, 1958, which is attached as Carrier's Exhibit No. 5.

In this connection, reference is made to Third Division Award 7870, with Referee Livingston Smith, covering a similar claim for compensation, wherein it was alleged that proper sleeping accommodations were not furnished. In the Opinion of the Board, it was held, in part:

> "Here accommodations were available. Whether or not they were 'Useable' is questioned by Claimants. While there is a conflict in the record on this point it is noted that at least one member of this crew made use of the sleeping quarters without apparent discomfort. Likewise we do not think that Rule 2 contemplates payment on a continuous time basis under these conditions. To so interpret this rule would have the effect of reading into the rule that which is not there."

In the instant dispute, it was by agreement (Carrier's Exhibit No. 3) that the employes placed their bedding on the foam rubber seats of dining-lounge car chairs instead of cots; Fred Dickey worked as Pantryman-Waiter on Train No. 8 the night of May 15 and 16, 1958 with other claimants and did not make any claim account cots not being furnished, which shows that "at least one member of this crew made use of the sleeping quarters without apparent discomfort"; the rules relied upon by the Petitioner only call for "sleeping accommodations" and it can not be denied that sleeping accommodations were furnished; and to sustain the claim of the Employes would be destroying the plain provisions of Rules 12 and 27 and the letter-agreement of August 10, 1957 (Carrier's Exhibit No. 3), which could not be done without reading into these agreements something that is not there. The fact is, the above-referred to agreements provided for the sleeping accommodations that the Petitioner has complained of and made the basis of the Employes' position.

In view of the wording of Rules 12 and 27 advanced by the Petitioner as supporting its position, it is evident that sleeping accommodations were furnished while these employes were deadheading, which is all that is required by these rules. Moreover, the letter-agreement between Messrs. Cobel and Wiley dated August 10, 1957, Carrier's Exhibit No. 3, is definite evidence that the very thing complained of in these claims was agreed to and that this agreement is still in effect. The claim is, therefore, without merit and must be declined.

The Carrier feels this is a nuisance claim that should never have been progressed beyond the local level, and the Board surely should not have been requested to take up its time in considering a case that is fully covered by the rules and agreements between the parties to this dispute. These claims for compensation for time released from duty enroute are without merit under the agreement rule here controlling, and, accordingly, the Board is expected and requested to deny them.

All matters contained herein have been subject of conference discussion and correspondence between the parties.

(Exhibits not reproduced)

OPINION OF BOARD: Carrier provided the named individuals while deadheading, with bedrolls, blankets, pillows and sheets with permission to use the foam rubber seats of chairs in the dining and lounge car.

Organization contends that the "equipment" provided the named individuals did not constitute "sleeping accommodations" under Rule 12 of the Agreement.

Carrier relies on Rules 12 and 27 of the Agreement of August 1, 1946 between Carrier and Joint Council of Dining Car Employes' Union, Local No. 351, of the Hotel and Restaurant Employes' International Alliance and Bartenders' International League and a Letter Agreement of August 10, 1956 between the Dining Car Service Supervisor of the Carrier and the System Chairman, Dining Car Employes' Union, Local No. 351.

The Claimant Organization acquired the foregoing Agreement through the process of a National Mediation Board Election dated February 6, 1958. It is the governing Agreement.

The Letter Agreement of August 10, 1957 made by the predecessor Organization and the Carrier agreed to the practice of which the Petitioner Organization now complains.

The change in representation did not alter or cancel the Letter of Agreement. It is properly before the Board and binding on the parties.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1961.