Award No. 10756
Docket No. DC-10315

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 849 on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Silas Vaughn, T. Woods and other similarly situated, that they be compensated on the basis of continuous time for July 28 and 29, 1957, account of Carrier's failure to provide adequate sleeping accommodations in accordance with the existing agreement.

EMPLOYES' STATEMENT OF FACTS: On August 15, 1957, Organization's General Chairman submitted the following time claim:

Mr. M. V. Dolan, Gen. Supt.
Dining Car Department
Chicago, Rock Island & Pacific RR
164 West 4164 West 51st Street
Chicago 9, Illinois

RE: TIME/CLAIM

Dear Sir:

Accept this as a time claim in behalf of the following employes:

L. C. Clark
T. Woods
L. T. Miles
D. Cawthorn
Tom Clayton
Leon Brown
and
Silas Vaughn

These employes were forced to remain on duty due to not being able to use the dormitory car on the Golden State Limited, en route from California to Chicago on July 28, and 29, 1957.

Carrier's position that the claim is without merit is further supported by Rule 2 (c) of the current agreement which provides that, "The Carrier will specifically designate the rest time on trips and at release points, subject to the requirements of the service." Rule 2 (b) states, in part, "Employes shall be considered as on duty and under pay from time required to report and do report until released from duty, except that actual continuous time not required for service on any trip, . . . shall be deducted from the continuity of time in all cases where the interval of release from service exceeds two (2) hours." Under the provisions of Rule 2 (c) crews are released from 10:00 P. M. to 5:00 A. M. It is evident that these rules do not specify that sleeping accommodations must be provided as a condition for deducting time authorized for rest enroute. Rule 2 (c) provides for an authorized rest enroute. Rule 2 (c) provides for an authorized rest period enroute, which in this instance is from 10:00 P. M. to 5:00 A. M., which time shall be deducted from the time paid for. The facts in the instant case are clear that the crew was granted authorized rest enroute between 10:00 P. M. and 5:00 A. M.

In summation, the Carrier submits that the agreement does not make it mandatory that sleeping accommodations shall be provided for dining car employes. Rule 14 (f) merely provides that when there are sleeping accommodations on the train in railway owned equipment, dining car employes will be permitted to use them.

The rules do not require that such facilities be air condition, nor is there any penalty prescribed for a failure to provide such facilities, or to have them air conditioned if they are provided.

To support our position in the instant case, we wish to call your Honorable Board's attention to Third Division Award 7870 in which the Board denied a similar claim. The Board had the following to say in rendering its decision:

> "We cannot read into Rule 14 (g) any requirement that sleeping accommodations be furnished under conditions which prevailed here. Their (accommodations) availability is permissive rather than mandatory. Here accommodations were available. Whether or not they were 'useable' is questioned by Claimants. . . . 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."

The facts are that claimant crew was released for rest enroute in accordance with the rule. Claim for compensation for time released from duty enroute is without merit under the agreement rules here controlling and should be denied accordingly.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 14(f) of the Agreement between the parties at page 16 reads as follows:

"(f) **MEALS AND SLEEPING ACCOMMODATIONS.**

Employes will be furnished meals while on duty and enroute in such railway-owned equipment as is in service on same train. Em-

ployes 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 on the trains. . . ."

In Award 9809, involving the same parties, the same Agreement, substantially the same set of facts, and involving the very same rule (Rule 14(f)) the claim was denied.

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 "when such accommodations are available in railway-owned equipment."

Applying the facts in this case to the rule above quoted it appears that there can be no other conclusion than that the Agreement has not been violated. We have carefully examined the record in this case and we do not find any evidence upon which a finding for the complainants could be predicated.

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

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1962.