Award No. 10933
Docket No. DC-11866

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 848

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes, Local 848, on the property of the Chicago, Burlington & Quincy Railroad for and on behalf of F. O'Neal, W. W. Blockman, F. Vassar, C. Smiley, Jr., H. Love, R. Brooks, and D. Brown, that they be compensated on the basis of continuous time for May 27, 1959, account of Carrier's failure to provide claimants with sleeping accommodations as provided by the effective agreement.

EMPLOYES' STATEMENT OF FACTS: Claimants were assigned to Carrier's California Zephyr on May 27, 1959. On this date, Carrier placed so-called sleeping facilities on the train to be used by claimants while deadheading during the hours of 10:00 P. M. to 6:00 A. M. These facilities consisted of an area about one-fourth the size of a standard railroad car and in this space a crew of fourteen or more were expected to sleep.

Further, the sleeping area was and is an air-tight compartment as the door must be kept closed since it faces a hallway used by passengers and other railroad employes going through the train. The air conditioning system supplies the only means of air circulation, and failure of the air conditioning system may easily result in the temperature exceeding 130° degrees.

Claimants, on the day involved in this dispute, were forced to sit up the entire night because of a failure in the air conditioning system which rendered it impracticable from a health standpoint that they even attempt sleeping in the air-tight hot-box designated by the Carrier as their sleeping accommodations. Upon failure of the Carrier to carry their time continuously, employes filed a time claim on behalf of claimants. (Employes' Exhibit A).

Successive appeals up to and including the highest officer on the property designated to consider appeals were filed in due course, each resulting in the original denial being affirmed. (Employes' Exhibits B, C, D, E, F, G, H, I, J, K, L, M, and N.)

EMPLOYES' POSITION: Rule 6(a) of the agreement in effect between the parties to this dispute provides as follows:

Deadheading

Rule 6. (a) Employes required to deadhead by order of the company shall be compensated for the actual time deadheading, com-

sleeping accommodations for dining car employes, during their rest periods aboard trains. Rule 6(a) merely speaks of sleeping accommodations being provided; it does not specify that the accommodations have to be air-conditioned.

Neither would it be reasonable to imply that these rules contemplate the furnishing of air-conditioned sleeping spaces to dining car employes, before deduction can be made for rest periods. Even though all Burlington trains where dining car employes work are air-conditioned, this equipment is always subject to failure. The parties, in negotiating Rules 6(a) and 5(a), could not possibly have intended to guarantee the employes they would never have to sleep in a non-air-conditioned car. Simple elementary knowledge of mechanics mitigates against finding any such intentions.

Petitioning Organization has tried this same case unsuccessfully against another Carrier before the Third Division. Award 7870 decided a claim by the dining car employes on the C&EI Railroad for continuous time because the air-conditioning in their sleeping quarters was inoperative. The Board held:

Third Division Award 7870, JCDCE vs. C&EI, Referee L. Smith

> "Here accommodations were available. Whether or not they were 'useable' is questioned by the 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 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.**" (Emphasis ours).

Just as the Board refused to read into the C&EI agreement a requirement that sleeping accommodations be air-conditioned, so also must it do in the instant case. The Board does not have authority to change the parties' agreement in this respect.

In conclusion, the Carrier asserts this claim should be dismissed because of Petitioner's failure to comply with Rule 25(b). The case was not brought to the Board within sixty days of the highest officer's declination. Award 6247.

If the merits are reached, the Board must hold that claimants are not entitled to payment of continuous time because the rules do not contemplate such payment in these circumstances. Award 7870.

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All data herein and herewith submitted have been previously submitted to the Employes.

(Exhibits Not Reproduced).

OPINION OF BOARD: Rule 25(b) of the applicable agreement of the parties provides as follows:

> "Rule 25(b). In the event an agreement disposing of the claim or grievance is not reached between the highest designated officer and the employe's representative, the case may then be handled in accordance with the provisions of the amended Railway Labor Act. **If no such procedure is invoked within sixty (60) days after decision**

of the highest officer of the carrier designated to handle claims and grievances, it is agreed by the parties hereto that the subject made the basis of controversy shall be considered disposed of and closed." (Emphasis ours).

The record shows that the instant Claim was denied by Carrier's highest officer designated to handle same on December 3, 1959; that the time limit under said Rule 25(b) for invoking the services of this Board terminated on February 1, 1960; that the Employes' notice of intention to file an ex parte submission with this Board is dated March 14, 1960; and that there is no indication the parties agreed, in writing or otherwise, to either waive or extend the time limit rule quoted above.

Therefore, this Claim is improperly before us and must be adjudged barred.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1962.