

Award No. 11597

Docket No. DC-10863

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYES UNION
LOCAL 849**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees' Union, Local 849 on the property of Chicago, Rock Island and Pacific Railroad Co. for and on behalf of J. B. Williams, W. Rogan, William F. Hill and other employees similarly situated, that they be paid a minimum of 8 hrs. pay for service performed December 22, 1957, stocking diner Kansas City, and compensated deadhead time Kansas City to Minneapolis and paid for each day so used at a minimum of 8 hrs. per day as provided in effective agreement.

EMPLOYEES' STATEMENT OF FACTS: On January 30, 1958, the following claim was filed by Organization's General Chairman with Carrier's Superintendent Dining Cars:

"Dear Sir:

"Accept this as a time claim in behalf of J. B. Williams, W. Rogan, William F. Hill and other Employees similarly situated. These employees worked from Minneapolis, Minnesota to Kansas City, Missouri on December 21, 1957 and were held over December 22, 1957 and deadheaded out of Kansas City the night of December 22, 1957 arriving at Minneapolis the morning of December 23, 1957, at 8:30 A. M.

"There were no sleeping accommodations available and these employees should be paid under Rule 4, and Rule 8. Rule 4 specifically states that

'Employees performing any service when used for extra service, employees will be paid actual time worked with a minimum of 8 hours for each day so used.'

"These employees were held in Kansas City being used by the carrier to protect its service going into Kansas City December 21, 1957. They should be given a minimum of 8 hours for December 22nd, and should be given deadhead time for the trip from Kansas City to Minneapolis and paid for each day so used at a minimum of 8 hours per day in accordance with Rule 4. Rule 8 is very clear and applies to

Our position with respect to such a charge is that claimants were not short any compensation due them on their second half December, 1957 earnings.

We submit on basis of the facts in this case, there was no violation of the agreement nor have the employees produced any evidence of loss by the claimants, nor basis, under the rules, and we respectfully request denial of the claim.

As previously stated, Rule 11(g) bars this claim from being progressed to your Board and the Carrier requests dismissal of employees' claim.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This claim must be dismissed, in our opinion, because the Organization failed to submit it to the Board in accordance with the provisions of Rule 11(g). That Rule states:

"If the decision of the General Superintendent Dining Cars is not acceptable, an appeal may be made in writing within fifteen (15) days to the chief operating officer designated by the Carrier to handle such disputes. Such chief operating officer shall render a decision within sixty (60) days after receipt of the appeal. If the decision of such operating officer is not acceptable, further appeal to a tribunal having jurisdiction pursuant to law or by agreement, must be taken within one hundred and eighty (180) days after such chief operating officer renders his decision. If appeal is not so taken to such authorized tribunal within the time prescribed, redress will be waived by all parties."

On February 18, 1958 Manager of Personnel G. E. Mallery (the chief operating officer designated by the Carrier to handle disputes) wrote the Organization's General Chairman that "your claims are respectfully denied." He added, however, "I shall be glad to discuss this case with you at our next conference." Such discussion did take place at a May 16, 1958 meeting, following which Mallery wrote, on June 13, 1958:

"This is to advise you that this claim is again declined for the reasons stated in my letter to you of April 14, 1958."

We cannot agree with Petitioner's contention that Rule 11(g)'s 180-day period started on June 13. That provision is quite clear: The Chief Operating Officer must make "a decision within 60 days" of the Organization's appeal. Here the appeal was submitted on February 18, 1958. Mallery's 11(g) decision was rendered on April 14 — just within the 60 day period. (June 13 would have been too late to comply with this time limitation.) Under the clear mandate of 11(g), appeal to this Board must be taken "within . . . 180 days after such Chief Operating Officer renders his decision". In this instance the deadline was in October. However, Petitioner did not file with the Board until November 15, 1958.

It is true that under Rule 11(k) "time limits specified may be extended by agreement". But, neither an invitation to discuss a pending case nor the actual discussion, in and of themselves, can be interpreted as time limit exten-

sion agreements, in our judgment. Absent additional evidence, there is no warrant to conclude that the Carrier was withdrawing its decision or reopening the case, merely because it offered to talk about the matter at a forthcoming meeting.

Under the circumstances the claim must be dismissed (see Awards 10688, 10460, 10347, 7000 among others).

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 Employees involved in this dispute are respectively Carrier and Employees 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 12th day of July 1963.