Award No. 11710
Docket No. DC-11357

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 351, on the property of the Illinois Central Railroad for and on behalf of extra employes Willie Thurman, Frank Carley, Henry Noel, Isaac Logart, Carl Atkins, Percy Collins, Luke McBride, Jimmy Robinson, Elliot Bell, Paul Chambers and all others similarly situated assigned to Train No. 53 on December 26, 1958, that they be paid at their pro rata hourly rate of pay for all time after the 16th hour, up to and including the 24th hour, they were required to layover at Jacksonville, Florida, December 27, 1958.

EMPLOYES' STATEMENT OF FACTS: On December 24, 1958 Carrier posted for bid assignments to trains 53 and 52, Chicago, Illinois to Jacksonville, Florida, and return, with Chicago as the designated home terminal. (Employes' Exhibit A.) Bids were to be accepted for the assignments in question from December 24, 1958 to January 2, 1959, inclusive, and at the termination of this period, Carrier would post names of the successful applicants in accordance with the applicable rules.

Carrier placed claimants, extra board employes, on trains 53 and 52 on December 26, 1958. In the course of their tour of duty, claimants were required to layover at Jacksonville, Florida, in excess of 24 hours on December 27, 1958, and were not compensated during this layover period.

Employes filed time claim on behalf of claimants dated January 22, 1959, contending that under Article 7 of the current agreement, claimants were entitled to compensation "for all time held between the expiration of the 16th and 24th hours after arrival" at Jacksonville. (Employes' Exhibit B.)

Successive appeals were instituted up to and including the highest officer on the property designated to consider appeals, each appeal in turn being denied. (Employes' Exhibits D, E, F, G and H.)

POSITION OF EMPLOYES: Article 16, paragraphs C and E of the current agreement provides:

> "C — When new runs are created or permanent vacancies occur, the Superintendent Dining Service shall notify employes by posting

run is considered in assigned service and is paid in accordance with the bulletined time schedule covering that particular run. Under no circumstances have the provisions of Article 7 (Held Away From Home Terminal Pay) been applied to an employe in assigned service. The employes assigned to diner 4100 on the trip in question were working on positions covered by bulletin and must be considered to have been in assigned service.

/s/ N. L. Patterson

General Superintendent

Dining Service."

In the handling of this dispute on the property, the Carrier requested the Employes to furnish any evidence they may have to support their position. No proof was ever furnished the Carrier that Article 7 had been applied as they allege it should be in this dispute. The Board has stated in many awards that the burden of proof in support of a claim rests with the asserting parties. See Third Division Awards 7964, 6114, 6359, and 4011. The Employes have failed to assume the required burden in this dispute and their claim must fail.

It is the duty of of this Board to interpret the rules of the agreement as they are made. It is not authorized to read into a rule that which is not contained or by an award add or detract a meaning to the agreement which was clearly not the intention of the parties. (Awards 6365, 5977, 5971, 5864, and 4439, Third Division.)

There is absolutely no merit to the Employes' request that the named Claimants be allowed Held-Away-From-Home-Terminal Time under Article 7 of the agreement as they were not in unassigned service on the claim dates.

The Board has no other alternative than to deny this claim because the agreement does not support the Employes' request.

All data in this submission have been presented to the Employes and made a part of the question in dispute.

OPINION OF BOARD: On December 24, 1958, Carrier advertised for assignment on trains 53 and 52 from Chicago, Illinois, to Jacksonville, Florida and return, positions of chefs, second cooks, third cooks, fourth cooks, and waiters. Bids for these assignments were acceptable to and including January 2, 1959.

On December 26, 1958, Carrier assigned Claimants, who were extra board employes, to fill the positions bulletined on December 24th.

Claimants were required to lay-over in Jacksonville, Florida, in excess of 24 hours on December 27, 1958. A claim was filed for compensation under Article 7 of the current Agreement.

Article 7 reads as follows:

"ARTICLE 7.

"Assignments and Held Away from Home Terminal Time

"Runs to which dining car employes are regularly assigned shall be specified by bulletin. Employes in unassigned service held at points

other than their designated home terminals will be paid for continuous time on the minute basis at the pro rata hourly rate for all time held between the expiration of the sixteenth and twenty-fourth hours after their arrival. If held 16 hours after the expiration of the first 24-hour period, they will be paid on the same basis for the next succeeding eight hours, or until the end of the 24-hour period, and similarly for each 24-hour period thereafter. Should employes in unassigned service be called for road service after pay begins, time shall be computed continuously. The time paid for account required to be on duty at the held away from home terminal point will be deducted from the held away from home terminal time allowed. For the purpose of applying this rule, the Company will designate a home terminal for each employe in unassigned service."

Employes contend that Article 7 should be read with Article 16 which deals with the size of dining car crews and method of job assignment. Particularly applicable are Paragraphs (c) and (d) of Article 16 which read as follows:

"(c) When new runs are created or permanent vacancies occur, the Superintendent Dining Service shall notify employes by posting bulletins. All applications must be made to the Superintendent Dining Service in writing. Assignments cannot be made through other method. An employe not applying for a run or vacancy he is entitled to shall lose his rights to same until it is again vacant, or he loses the run he had at the time he refused said run.

"(d) The change of a home terminal, and/or a change of three hours or more in the scheduled reporting time at the home terminal will permit employes assigned to the run to vacate it for other runs they may be entitled to by their seniority; also, the opening up of such changed run for assignment by regular application upon request of the employes' representative."

Carrier contends that it has long been "recognized that an employe, regular or extra, used to protect an assignment on a bulletined position is considered in an 'assigned' service and that Article 7 has never been applied to such an employe."

Petitioner, on the other hand, argues that under Article 16 of the Agreement, a position is "unassigned" until an employe is assigned to a position through the posting of bulletins and written application is made for the position. Since applicants for the positions on trains 53 and 52 had until January 2, 1959 to apply for such vacancies, the positions were "unassigned" at the time Claimants were directed to work on those trains.

Article 7 specifically identifies "assigned" positions as runs to which employes are regularly assigned. When the positions here involved were advertised and bulletined as noted above, they became regular runs insofar as those positions became regular assignments. The reference in Article 7 is not to employes who are regularly "assigned" or who are "unassigned" but rather to "employes in unassigned service." The service between Chicago and Jacksonville on trains 53 and 52 was "assigned service" and in that respect the Claimants may be considered as employes who substituted for regularly assigned employes in that service. They are entitled only to the same rights and benefits as regular employes in that service.

Article 16, particularly paragraphs (c) and (d), which is relied upon by the Petitioner, deals with the problem of creating and filling of permanent vacancies. An assignment of an employe to a created or permanent vacancy can only be done on the basis of the provisions of Article 16 and it's true that such assignments "cannot be made through other method." Again, this deals with assignment of individuals, employes who applied for positions bulletined. Article 7, on the other hand, deals exclusively with the question of service. In other words, there may be an assigned service and no permanent assigned employes to that service because of quits, discharge, illness, vacations, etc.

On May 4, 1959, Carrier's Manager of Personnel wrote to Petitioner's General Chairman, in part, as follows:

> "If you have knowledge of any instance or instances where payments were or are being made as you now allege they should be, I would appreciate such information. My investigation reveals that it is not and never has been done. It has always been recognized that an employe, regular or extra, used to protect an assigned or bulletined position is considered an 'assigned service' and Article 7 has never been applied to such an employe."

Nowhere in the record does Petitioner refute this assertion which was made on the property and the record contains no evidence that the practice has been otherwise than as stated by the Carrier.

The record also shows that, in the handling of this dispute on the property, Carrier requested that Petitioner furnish evidence to support its position. None was so furnished.

Furthermore, Carrier has presented a statement by the General Superintendent of Dining Service supporting its position which reads as follows:

> "TO WHOM IT MAY CONCERN:
>
> "It has always been our practice that any employe, regular or extra, who obtains a position, by bid or assignment, on a bulletined run is considered in assigned service and is paid in accordance with the bulletined time schedule covering that particular run. Under no circumstances have the provisions of Article 7 (Held Away from Home Terminal Pay) been applied to an employe in assigned service. The employes assigned to diner 4100 on the trip in question were working on positions covered by bulletin and must be considered to have been in assigned service."
>
> /s/ N. L. Patterson
>
> General Superintendent
>
> Dining Service."

We fail to find any Third Division Awards directly applicable to the subject. The First Division, however, has had occasion to rule on this issue a number of times and has held that when a bulletin is posted a regular run is created and that extra employes working during the period the position is advertised are not entitled to lay-over compensation. In First Division Award 13187 (O'Malley) the Carrier took a position similar to the Carrier in this dispute, that when a run is bulletined for regular service, it was no longer considered as "unassigned service." The Board in that Award said:

"This run was bulletined for bids on the day it started. The Claimants were placed on the run in accordance with the rules, and were entitled to continue on that run until the expiration of the bulletin.

"Vacancies arose with the creation of the run; and the Claimants having caught could not be replaced during the bulletined period. We can see no difference between the filling of vacancies by newly bulletined runs and the filling of a vacancy created by the fact that some one on a regular run lays off for a day or for a longer period. The employe who catches a vacancy must in either case take that which is bitter along with that which is sweet."

See also First Division Awards 11766 (Spencer), 13177 (O'Malley), 13188 (O'Malley) and 1073 (no referee).

The applicable rules of the Agreement emphasized by the Petitioner have been in effect for over 20 years. During that period of time, jobs have been bulletined, and extra employes have been assigned to those jobs during the advertising period. In all probability, there have been some lay-overs of employes in that period of time, and yet this is the first time that Petitioner has filed a claim for compensation under Article 7.

The Petitioner has failed to establish by preponderance of evidence the meaning and intent it prescribes to Article 7 as well as Article 16. Each of them refers to separate subjects.

In light of the record and on the basis of the contract terms, there is no merit to the claim.

Since we have adjudicated the claim on the merits, there is no need to consider the jurisdictional question raised by the Carrier.

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 Carrier did not violate the Agreement.

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 5th day of September 1963.