Award No. 12027
Docket No. DC-11635

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES
Local 370

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 370 on the property of the New York, New Haven and Hartford Railroad Company, for and on behalf of William Tinsley, Cleveland Jordan, K. Irby, A. Carter, C. Watson, and all other regularly assigned employes, that they be paid at their pro rata hourly rate of pay for each 24 hour period short of 4 of such periods, for the month of February, 1959, and all subsequent months, in which the Carrier fails to grant claimants at least four (4) twenty-four (24) hour periods of relief each month as required by Rule 7 of the effective Agreement.

EMPLOYES' STATEMENT OF FACTS: Claimants are regularly assigned employes. Under Schedule Rule 7, regularly assigned employes are entitled to not less than 96 hours relief per month in cycles of 24 consecutive hours. Claimants were not granted 96 hours relief during the month of February, 1959, and, as a consequence, Employes on April 1, 1959, filed the following time claim:

"Mr. W. A. Duprey
Manager Dining Service
New Haven Railroad
163 Dorchester Avenue
So. Boston, Mass.

Dear Sir:

We claim 24 hours pay for each day under four (4) on and above any other earnings for Messrs: William Tinsley, Cleveland Jordan, K. Irby, A. Carter, C. Watson and all employes similarly situated for the month of February and all months subsequent thereunto wherein these employes are not granted four (4) days relief in compliance with Rule 7.

the very right they sought in negotiation, but subsequently withdrew. The existing rules were interpreted in Award 7910. Carrier respectfully submits that your Honorable Board may not write into the Agreement between the parties a rule that is not presently there. It is well settled that such revision of a collectively bargained Agreement must be had under the provisions of the Railway Labor Act, as amended, not by time claim to your Board.

General Chairman Washington, in his appeal of April 27, 1959 (Carrier's Exhibit "C") states in part:

> ". . . **Rules 1 and 6 have been interpreted we believe in error by the Board** to grant the Carrier the right to work an employe on his layover or relief day. . . ." (Emphasis ours.)

The Employes take the position, notwithstanding the interpretation of the applicable rules by Award 7910 (Docket Number DC-7919), that regular employes, regardless of any other provision of the schedule, must be granted four relief days per month. We submit that the Employes' contention that your Honorable Board erred by your prior interpretation and adjudication of the issue involved in this dispute is not controlling here. The position of the Employes is to attempt to change the "thinking" of your Honorable Board. The Employes have produced no new evidence supporting their opinion that your Honorable Board erred in Award 7910; apparently, they are simply dissatisfied with the determination made supporting the Carrier in Award 7910 and are now attempting to resubmit the identical issue seeking reversal of your Board's prior award.

The issue involved in the instant claim is res adjudicata. The claim should be dismissed or denied.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose during February 1959 when employes in the dining car service were required to work during February 1959 on relief days in order to provide work enough to make the 205 hour monthly guarantee. The Carrier called and used the Claimants on their relief days.

The Claimants contend that they should be compensated when they work on their relief days. That they are entitled to at least four, twenty-four hours periods of relief each month as required by Rule 7 of the Agreement.

The Carrier contends that the Agreement must be interpreted as a whole, not just an examination of Rule 7, but also Rule 1, the basic months work requirement. That the Claimants must make their minimum of 205 hours per month before they are entitled to relief time. In addition this has been the practice for the past 30 years, and that the issue has previously been decided in Award 7910 of this Board.

The question to be resolved:

> Are the Claimants entitled to the relief periods set out in Rule 7, or compensation in lieu thereof irrespective of Rule 1, of the current Agreement?

An examination of Award 7910 of this Board reveals similar facts as presented here the difference being that in Award 7910 the employes had not worked on their relief time having refused the call on the grounds that Rule 7, guaranteed four lay-off days in spite of the fact that the guarantee of 205 hours monthly had not been worked. The facts in this claim reveal that the men worked on their relief time and are now seeking compensation for so working on their relief as they were guaranteed four (4) days off duty each month, irrespective of whether they worked 205 hours in the month. In Award 7910 the Claimants advanced the argument that Rule 7, guaranteed four (4) days off per calendar month, even though the men did not work 205 hours, a basic month's work. The ruling in Award 7910 denied the claim on the basis that it was a condition precedent that Rule 1 be complied with, work 205 hours per month before Rule 7 applies.

An examination of the record here shows that the employes worked on their relief time but such was necessary in order to complete the 205 hours for a basic month's work. Thus, the question resolves itself down to a distinction between Award 7910 and the facts herein. If the employes lay-off on their relief days and fail to work 205 hours per month, they are not paid for the relief days under Award 7910. The question here being if they work on their relief days and accumulate 205 hours per month, thereby can they obtain additional compensation for the relief days worked?

We are of the opinion that the general principle as enunciated in Award 7910 is present here. That Rule 1, paragraph 3, makes it a condition precedent that an employe must work 205 hours, a basic month's work before he is entitled to the benefits of Rule 7. It appears also from Award 7910 that for many years standing that was the opinion of the parties and the rules were so applied.

Thus, this Board is bound by the precedent established by Award 7910.

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 Contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1963.