Award No. 12647
Docket No. DC-14275

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, 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 Woodrow Macklin, that he be compensated for all time between 9:00 P. M., January 23, 1963, and 1:30 A. M., January 24, 1963, while assigned to Carrier's Train No. 18, Dining Car 421, account of Carrier's failure to compensate Claimant during these hours in violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: In response to a time claim filed by Claimant while assigned to Carrier's Trains 17-18, Carrier's Superintendent Dining Cars sent Claimant the following letter:

"Chicago, February 19, 1963
File: 16-P
15-K

W. Macklin:

This will acknowledge receipt of Form DC-29 which was prepared by you for and in your behalf for additional time other than that which is outlined in your working schedule for Trains 17-18, January 21, 22, 23, while you were assigned as Waiter to Dining Car 421 arriving Minneapolis, Train No. 18, January 23rd. Specifically, you have claimed a total of 3 hours additional time on January 23 beginning with 9:00 P. M. until 12 Midnight. You have also claimed one hour and 30 minutes on January 24th beginning with 12 Midnight until 1:30 A. M. on that date.

This was due to Train No. 18 due to arrive Minneapolis on January 23 at 7:30 P. M.; however, account being operated late this train did not arrive Minneapolis until 1:30 A. M., January 24.

I wish to advise that at the time this trip was made by you, instructions provided that if Train No. 18 was operated sufficiently late into Minneapolis that it would arrive that point at 12 Midnight

OPINION OF BOARD: Claimant in this dispute was due to arrive at his home terminal, Minneapolis, at 7:30 P. M., January 23, 1963. The train did not arrive in Minneapolis until 1:30 A. M. the following day. The issue confronting the Board in this case is the proper interpolation of Rule 2, Subparagraph 6(b) and 6(c), which are quoted below:

"RULE 2.

6 (b). Time allowances will be calculated from time employes are required to report and do report until released at layover, set-out, or terminal point, or where rest periods are provided under Rule 2, except that no deduction in time will be made where interval of release is less than two (2) hours.

6 (c). The carrier will specifically designate the rest time on trips and at release points, subject to the requirements of the service."

The Claimant and in his behalf the Organization contend that the Carrier was obligated to carry the Claimant's time until arrival at the home terminal. They allege in support of their claim that it has always been the practice for the Carrier to pay this category of employe until the train actually arrived at the home terminal, regardless of whether the train arrived on time or arrived late.

There are letters in the record written by the Carrier to the Organization specifying changes in the rest periods, both of which letters post dated the instant claim.

There is also evidence that discussions were held between this Carrier and the Organization during the processing of this claim on the property, in an attempt to clarify by the adoption of a new agreement the instant set of circumstances. This was unsuccessful. There is no dispute that the rest period designated for this particular trip was between 9:00 P. M. and 6:00 A. M., unless "otherwise specified by time assignments and subject to the requirements of the service."

There have been conflicting assertions by both parties made to this Board relative to the doctrine of practice. The Organization maintains these employes have always been paid until time of arrival at their home station. The Carrier denies this, and asserts that they have continued their time until arrival where there were no sleeping car accommodations. However, where there were sleeping car accommodations, their pay was stopped in the same manner as the stewards'. In the instant case, the Carrier asserts that sleeping car accommodations were available, and this fact was not denied by the Organization. The Carrier, therefore, in line with past practice, cut off the Claimant's pay at 9:00 P. M., the beginning of the rest period.

The onus and burden of proof is always on the Petitioner. After reviewing the record, considering the argumentation propounded by both sides, we feel that the Claimant has failed to present to this Board a preponderant body of proof to sustain his allegation of practice, and accordingly we must deny his claim. The awards made by this Board are numerous on this point, and need not be cited here.

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 Agreement 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 June 1964.