Award No. 14188
Docket No. DC-15470

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Local 849, on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Algie Simons, Thomas Clayton, James Sample, Edward Clayton, Fred Lawson, Eugene Moore, Edward Monroe and John Q. Oliver, that Carrier be compelled to pay these claimants from the time that Carrier's Train 4-10 was involved in an accident on September 27, 1964, until claimants arrived at their home terminal.

EMPLOYES' STATEMENT OF FACTS: Neither the facts nor the issue in this case are in dispute. Claimants were assigned to Carrier's Train 4-10 on October 27, 1964. On this date, the train in question was involved in an accident. The accident occurred at about 10:55 P. M. Claimants' time was carried up to 11:00 P. M. These employes were required to deadhead back to their home terminal, for which they were not paid.

Employes, under date of October 27, 1964, filed time claims on behalf of claimants requesting that they be paid from 11:00 P. M. September 27, 1964, until their arrival at the home terminal (Employes EXHIBIT "A"). Carrier, in letter dated October 11, 1964, admitted that claimants had not been so compensated but that any compensation for deadheading would have to be handled in connection with the employes' personal injury claims (Employes EXHIBIT "B"). Employes appealed this decision to the highest officer on the property designated by Carrier to consider appeals, who, under date of January 5, 1965, also denied the claim (Employes EXHIBITS "C" and "D").

EMPLOYES POSITION: Rule 8 of the Agreement between the parties provides insofar as herein applicable:

> "Rule 8.—DEADHEADING. Deadhead hours properly authorized will be counted as service hours and upon the same basis * * *"

It is the position of Employes that, notwithstanding any claims the claimants may or may not have against Carrier as a result of the accident in question, Carrier was and is required to compensate claimants in accordance with the agreement between the parties. Time claims arising under the agreement cannot be disposed of or settled in a personal injury claim. Disputes concerning proper payment to employes must be progressed and finally determined as provided for in the agreement between the parties and the Railway

time has been cut off at the time of the accident and any time lost has been claimed as a part of their personal injury claims.

To be specific, this same procedure was followed when Carrier's Train No. 17 derailed at Des Moines, Iowa, on August 17, 1962; when Train No. 18 derailed at Beech, Iowa, on November 16, 1961; when Train 18 derailed at Houston, Texas, on June 18, 1959; and the same practice was followed for many previous accidents involving dining car as well as other employes.

CARRIER DID NOT VIOLATE ANY RULE OF THE AGREEMENT.

The Employes have not cited any violation of rules regarding payment for time lost except that such payments should have been made on the regular payroll instead of through personal injury claims. There is no rule of the Dining Car Employes' Agreement which requires the handling the Employes have requested.

Moreover, the employes did receive the time lost payments to which they were entitled. They did not lose any money.

The Employes, on appeal of this claim, stated they felt that because of the employes being paid through personal injury claim channels instead of being carried on the payroll the employees involved might lose out on their vacation qualification. Carrier assured the employes that the few hours involved would be counted towards vacation credits. (See Carrier's Exhibit "D".)

CONCLUSION

It is, and always has been, standard practice to handle time lost payments under personal injury claims. In this case, the Employes object to Carrier's inclusion of time lost from time of accident until deadheaded to Chicago, Illinois, the employes' home terminal, as a part of these employes' personal injury claims.

Carrier has shown that the employes involved have received full payment for all time lost, including time from time of accident until returned to home terminal immediately after accident on September 27, 1964, and all employes involved have signed statements of claim settlement releasing Carrier from any further liability as a result of the September 27, 1964 accident.

Carrier's handling followed a well-established past practice of long standing in handling such accident time lost payments. Finally, Carrier has violated no agreement rules in compensating claimants for time lost as was done in this case. Therefore, your Board is requested to deny the Employes' claim.

OPINION OF BOARD: It appears from the record that neither the facts nor the issue in this case are in dispute.

The Claimants were assigned to Carrier's Train 4-10 on October 27, 1964. At about 10:55 P.M.; on that date, Train 4-10 was involved in an accident. Claimant's time was cut off at the time of the accident.

The Employes state in their Ex Parte Submission that the Claimants were required to deadhead back to their home terminal and that they were not paid for that time.

The Employes contend that the Carrier is required to pay the Claimants under Rule 8 of the Agreement. Rule 8 reads in part:

> "RULE 8. DEADHEADING. Deadhead hours properly authorized will be counted as service hours and upon the same basis, subject to the provisions of Rule 2(b)."

Carrier contends that any time Claimants lost after the accident was lost time caused by the accident. They also state all eight of the Claimants have settled their claims for time lost and personal injuries sustained on September 27, 1964. In the Carriers Ex Parte Submission they list the amounts paid each Claimant and reproduce the "Release of All Claims" signed by Edward H. Clayton. (Record pages 17 and 18).

The record made on the property is most meager and it is extremely difficult for the Board to properly evaluate this claim.

The only certanties contained in the record are the facts that these Claimants were on duty on Train 4-10 at the time of the accident and that they had claims for loss of time and/or personal injuries. There is no dispute that these claims were properly settled between the Carrier and the individual Claimants.

There is no evidence to show that deadheading back to their home terminal was authorized. We must interpret the word "Authorize" in Rule 8 to mean authorized by the Carrier.

We must find that the Carrier was within its' managerial prerogative when it cutoff the Claimants time following the accident and negotiated settlements with each Claimant.

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 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 28th day of February, 1966.