Award Number 17702
Docket Number DC-17810

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

- Dining Car Department -

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 351 on the property of the Atchison, Topeka & Santa Fe Railway, for and on behalf of Lounge Car Attendent Howard Wheeler, that he be paid under Article III, Section 13 of the Agreement between the parties for deadheading on instructions from the Carrier Los Angeles to Chicago, September 10, 1967.

EMPLOYES' STATEMENT OF FACTS: Claimant, assigned to Carrier's El Capitan, arrived Los Angeles, California on September 9, 1967, on which date his assignment was abolished. Claimant was to deadhead to Chicago, Illinois the following day on Carrier's Train #24. Train #24 had a departure time of 1:15 P.M. Claimant, however, arrived at 1:22 P.M., seven minutes after the train's departure. Claimant was then told that he could deadhead to Chicago on the same train the following day, which he did.

Carrier refused to compensate Claimant for the deadhead hours and, as a consequence, Employees on September 15, 1967 filed a time claim on his behalf. (Employee's Exhibit "A"). On October 26, 1967, Carrier's Superintendent, Dining Car and News Department declined same. (Employee's Exhibit "B")

Employees appealed this decision to Carrier's Vice President and General Manager, who under date of December 4, 1967 also declined the claim. (Employee's Exhibits "C" and "D") After a further exchange of correspondence with this official, Employees on January 10, 1968 advised Carrier that its decision was not acceptable and that the organization intended to submit the dispute to you Board for a final determination. (Employee's Exhibits "E", "F" and "G")

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: There is an Agreement in effect between the respondent Carrier and its Dining Car Employees represented by the Joint Council Dining Car Employees' Local 351 effective March 1, 1946 and hereinafter referred to as the Dining Car Employees' Agreement and also supplements to Agreement effective March 1, 1964. Copies of these Agreements are on file with the Third Division, National

I am unable to find any reason or basis under the Agreement rules or the position you advance that would prompt me to reconsider the appeal claim referred to hereinabove. Therefore, it is again declined for the reasons advanced by Mr. John R. Baird, Superintendent of the Dining Car and News Department, in his letter dated October 26th, 1967 and mine of December 4th, 1967, which are hereby reaffirmed.

Sincerely,

/s/ GEORGE J. ROCHE
George J. Roche
Vice President"

Under date of January 10, 1968 the Petitioner's Mr. Seltzer notified the Carrier's highest officer of appeal as follows:

"January 10, 1967

Mr. George J. Roche
Vice President/General Manager
Fred Harvey Incorporated
80 East Jackson Boulevard
Chicago, Illinois 60604

Dear Sir:

Because of our inability to compose our differences in the case of Mr. Howard Wheeler VS The A. T. & S. F. Railroad, you are herewith advised of our intention to advance the case to The National Railroad Adjustment Board for further adjudication.

The above for your information.

Very truly yours,

/s/ W. S. SELTZER
Mr. W. S. Seltzer
Financial Sec'y-Treasurer/
General Chairman"

(Exhibits not reproduced)

OPINION OF BOARD: It is undisputed that Claimant, under instructions to deadhead from Los Angeles to Chicago reported to the designated train seven (7) minutes after its scheduled and actual departure. He was thereupon instructed to return to Chicago by way of the same train's departure on the following day, and did so. Carrier's statement is not denied that the assignment of Claimant to the next day's train was accompanied by the statement that he would not get deadhead pay therefor.

Employes protest failure to pay Claimant deadhead pay for the delayed trip, contending that he deadheaded on instructions of Company pursuant to Article III, Section 13, viz.:

"Employees deadheading on instructions of the Company will be credited with hours deadheading on the same basis as provided for regular service in Section 3 of this Article, it being understood that such deadheading may be combined with service under that section."

Employes contend that, notwithstanding his having been late for the train to which he was assigned, Claimant satisfied the requisite of deadheading "on instructions of the Company" back to his home station. Employes charge that by this denial of pay, Carrier is seeking to impose discipline on this employe, using for that purpose deprivation of an Agreement benefit and also procedures not conforming to the Agreement discipline provisions.

Carrier takes the position that the failure of Claimant to comply with instructions to board the designated train constitutes a failure to meet the requisite of "on instructions of the Company". Therefore, Carrier is released of the obligation to pay for the time of the trip. The fact that Carrier then provided other transportation for Claimant on the next day, cannot stand as compliance for the original instructions.

Carrier points out that Article III, Section 13 contains the statement,

> ". . . it being understood that such deadheading may be combined with service under that section."

In Carrier's view, this stated intention to make employe's services available if needed, on a paid deadhead, obligates employes to respond to schedule instructions thereon in the same manner as for a scheduled working assignment.

Carrier contends that an employe who fails to report for deadheading is in the same position as a regular member of crew who has failed to protect his assignment. Under Article II, Section 1 (b) and Article III, Section 1 (a), employes who lay off of their own accord are not entitled to the basic monthly compensation otherwise provided.

The determination of this controversy hinges on the meaning and application for the given circumstances, to be given the phrase "instructions of Company" as a prerequisite for deadheading pay.

The obvious thrust of the phrase is that deadheading time is to be paid for if the employer merely authorizes the employe to undertake such a trip. This narrow condition was satisfied in the instant circumstances. But is there also not an expectation of employer control over when and how the trip is to be made? We believe that this secondary meaning is supported by the treatment of such activity as if it were regular work performed (and indeed by the further requirement that the employe may be called upon to perform work during such a trip).

In our opinion, Article III, Section 13, intends for good reasons to preserve such employer control in assigning the train which is to be taken. This may involve considerations of having the employe meet ensuing assignment schedules, the availability of space for the employe and the effect of failure to have used such reserved space, as well as considerations of needs to press the employe into service on the trip (a right expressly granted to Carrier in the controlling clause). Although no specific injury to Carrier along these lines was demonstrated in the facts before us, we believe that the controlling provision is a standing protection against such abuse and adverse effect and Carrier is entitled to its uniform implementation.

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 30th day of January 1970.

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