

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD TRAINMEN
REPRESENTING DINING CAR STEWARDS
TEXAS AND PACIFIC RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of extra Dining Car Steward L. E. Turner for time lost when extra dining car used and Dining Car Steward not placed in charge on regular run Train No. 26, and Inspector J. H. Findley was used in place of a Dining Car Steward on February 20, 1937, and also, claim for deadhead time returning to Fort Worth (home terminal) the following day. Carrier's file T-13845."

EMPLOYEES' STATEMENT OF FACTS: "Regular dining car service is maintained on Passenger Train No. 26, Fort Worth to Marshall, Texas. On February 20, 1937, the regular car No. 1022 and the regular steward were on this train, but due to the fact that there was a large volume of passengers on this date, an extra car, No. 1012, was placed in service out of Fort Worth and run to Shreveport, Louisiana. This car had four cooks and four waiters, but no dining car steward in charge. Traveling Dining Car Inspector J. H. Findley was on the car between Fort Worth and Shreveport, he seated all patrons at the tables, issued them checks, totaled the amounts on each check, and made the change for all patrons."

"Extra Dining Car Steward L. E. Turner was available for service and claimed time lost for the service trip, and deadhead mileage returning to the home terminal, which was declined."

POSITION OF EMPLOYEES: "In the handling of this case with the Carrier's Representatives, they held that Traveling Dining Car Inspector Findley was not in charge of Car No. 1012 and that he was merely on the train in the performance of his duties as an officer in the Dining Car Department, and in the same manner as he would have been on any other trip that he would make over the road in the performance of his duties as a Traveling Inspector, that a negro waiter was in charge of the car."

"With this statement we do not agree, and it would make no difference whether Inspector Findley was in charge of the car or whether a negro waiter was in charge, the fact remains that Inspector Findley was on the car and he met all the patrons who entered the Dining Car for the purpose of eating, that he escorted them to their seats, handing them their checks, totaling the amount of the charges after the meal was finished, and making the change, but, as for making the report in connection with the meals served, et cetera, we are unable to state what name was signed on the report or who made the remittance at the completion of the trip of the moneys collected. It is a further fact that on this date, due to the unusually large number of passengers on Train 26 out of Fort Worth, that the regular dining car on this train could not take care of all of them, and in order to accommodate these passengers for meals, the extra dining car was put on the train out of the home terminal and was operated 38 miles beyond the point where the regular dining car was set out; that there were four cooks and four waiters on

"In conclusion, would call attention to your Board's Award 493."

OPINION OF BOARD: On May 7, 1936, the parties to this dispute entered into a joint agreement as an addendum to the collective agreement which they had negotiated to become effective May 16, 1936. The operative portion of this agreement follows:

"It is understood that the Railway Company assumes no obligation in connection with that agreement to use dining car stewards and/or conductors on runs where their services are not required."

Regardless of what considerations may have led to this joint interpretation, it is clear that it was intended to give the carrier some managerial discretion in deciding to use stewards or not to use them in terms of the service requirements at a given moment. It is equally clear, however, that this agreement does not give the carrier an arbitrary privilege to dispense with a steward regardless of the service requirements. If the carrier enjoyed this privilege, the agreement would be illusory.

The question for decision by the Division is, therefore, whether in the circumstances of this controversy the carrier acted without justification in dispensing with the service of a steward on the run involved in this dispute. The Division is of the opinion that the evidence of record does not justify a conclusion that it did. The record indicates that the car in question was put into this train for the special accommodation of a group of teachers, partly for the purpose of furnishing them with food, partly for the purpose of furnishing them with more adequate space in which to pass their leisure, and partly to furnish them with living quarters while attending a convention in New Orleans. The record also indicates that on prior occasions the carrier had used this car without the service of a steward. It cannot be denied, however, that the fact that the carrier directed Inspector Findley to accompany this car is some evidence that it thought that at least some of the services of a steward would be required. The evidence of record, however, is in sharp conflict as to how far the inspector performed the services of a steward. The record contains some evidence tending to show that Inspector Findley did no more on this run than he would have done on a run to which a steward had been assigned. On the evidence of record, the Division is of the opinion that the carrier, in the circumstances of this dispute, did not abuse its discretion in not assigning a steward to the run involved.

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 employee involved in this dispute are respectively carrier and employee 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 evidence of record discloses no violation by the carrier of the agreement between the parties.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1938.