Award No. 872
Docket No. DC-846

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

DINING CAR COOKS AND WAITERS INDUSTRIAL ASSOCIATION

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: "Claim of the System Committee of the Dining Car Cooks and Waiters Industrial Association that, Chefs, Isaac Gardner and Reeder Mosley, are entitled to receive the maximum rate of $155.00 per month as provided for in the agreement retroactive to December 1st 1937."

EMPLOYES' STATEMENT OF FACTS: "Chefs Isaac Gardner and Reeder Mosley entered the service of the carrier in April 1924 and January 1923 respectively. Since their first entry into service both employes have been continuously employed by the carrier in the Dining Car Department."

"This will certify that there is an agreement in effect between the respective parties to this dispute, and which is dated February 1st, 1927, and which is on file with the Board together with subsequent addendums."

POSITION OF EMPLOYES: "It is the contention of the employes that since both employes have been in the continuous employ of the carrier in its Dining Car Department for more than seven years, from January 1st 1929, that they are entitled to the maximum rate provided for in the agreement for Chefs with more than seven years service.

"The agreement extant between the organization and the carrier provides, as to rates of pay, for the following:

'Chefs:	Per Month
1 to 3 years service	$125.00
3 to 5 years service	130.00
5 to 7 years service	140.00
After 7 years service	155.00

The accumulation of service in the different classifications for the purpose of applying the proper rate under the graduated scale begins January 1st 1929.'

"At the present time Gardner is paid a rate of $140.00 per month, and the rate is explained by the carrier's Superintendent of Dining Car Service in the following letter:

'Kansas City, Mo., January 14, 1938

Cook Isaac Gardner:

Have your letter of January 6th:

POSITION OF CARRIER: "We repeat for convenience from the current agreement:

'The accumulation of service in the different classifications for the purpose of applying the proper rate, etc.' (Underscoring added.)

"It is not clear to us how the underlined portion of the current agreement:

'Service in the different classifications'
can be properly converted into:

'Service within the Dining Car Department,'

as is apparently attempted to be done by the employes as reflected by the following quotation from Exhibit B:

'It is our position that service within the dining car department is the determining factor in fixing the rate of pay, and not service within any one classification covered by the agreement.' (Underscoring ours.)

A comparison of this quotation with that from the agreement shows the specific question for decision.

" 'Service in the different classifications' does not say nor mean 'service in all classifications,' which would be the equivalent of what the petitioner contends.

"We ask that this claim be disposed of on the basis of the agreement which covers it and not by the application of an award of this Board in a case where the working agreement reads differently. We do not believe Award 696 is applicable in this case as either determining or influencing.

"We respectfully request that the Board deny the claim of the petitioner.

"If any statements in the employes' submission are not fully explained in this submission, we desire ample time and opportunity to make reply."

OPINION OF BOARD: This case involves the same question as that considered in Docket DC-844, Award No. 871 and the opinion in that case is also applicable here. The claim will be denied.

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 no violation of the agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of June 1939.