

Award No. 1098
Docket No. DC-1020

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Ex parte submission of the Brotherhood of Railroad Trainmen, in claim of Steward F. J. Fagan for seventh year rate of pay in accordance with Award 696, Docket DC-689, National Railroad Adjustment Board, Third Division, for time worked from April 16, 1937, up to Aug. 1, 1938."

EMPLOYEES' STATEMENT OF FACTS: "Steward Fagan has seniority date of May 5th, 1929; however, the fourth year rate of pay has been the highest rate allowed for service performed until August 1, 1938, on which date the seventh year rate of pay was made effective."

"Claim was made for compensation on basis of seventh year rate for service rendered prior to August 1, 1938, in accordance with Award 696, Docket DC-689, National Railroad Adjustment Board, Third Division. This claim was denied by the Carrier."

POSITION OF EMPLOYEES: "This case arises under Rule 1 of Agreement covering pay and regulations for Dining Car Stewards effective July 1, 1936, reading:

'RATES OF PAY

Rule 1 Dining Car Stewards	Monthly Rate	Hourly Rate
1st year's service	\$135.00	.5625
2nd " "	145.00	.6050
3rd " "	150.00	.6250
4th " "	155.00	.6450
5th " "	160.00	.6675
6th " "	165.00	.6875
7th " "	175.00	.7300
Cafe Car Stewards	135.00	.5625

NOTE:—A dining Car Steward entering or re-entering the service, who has had one or more years accumulated experience, will initially be allowed the second year rate."

"The above rates effective October 1st, 1937, were each increased \$13.20 per month, and 5½¢ per hour.

"In Award 696, Docket DC-689, the Board found that the Carrier misapplied the rule of the Agreement quoted above, and also in the same case the Board's opinion in part was to the effect that in view of the special circumstances the adjustments in the rates of pay involved should not antedate the period on which the claimants respectively made their claims.

There is in existence an agreement between the parties bearing effective date of July 1, 1936.

OPINION OF BOARD: As clearly indicated in the statement of claim, Steward Fagan seeks the seventh year rate of pay for time worked from April 16, 1937 to August 1, 1938, by way of applying to himself the determinations contained in Award 696 of this Division. That Award, holding that progressive rates of pay must be applied on the basis of seniority dates rather than of years of actual service, was expressly confined to the claims of Steward Adelson and Steward Jacobi there involved; and because of the special circumstances surrounding the interpretation of the pertinent rule there established, the readjustments in the rates of pay for even these stewards was restricted to the dates, April 16, 1937 and June 3, 1937, respectively, on which their claims were filed. The application of these determinations to Steward Fagan would entitle him to a readjustment of his rate of pay as of October 18, 1938, when his claim was submitted. In point of fact the carrier had made readjustments for all stewards, including Steward Fagan, as of August 1, 1938, by way of general application of Award 696, which had been rendered July 25, 1938. Steward Fagan, therefore, is not only seeking an application of Award 696 which goes beyond the terms of that Award, but in submitting his claim on October 18, 1938, he is seeking redress after the conditions of which complaint is made have disappeared. Under these circumstances there is clearly no merit in his claim.

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 employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over dispute involved herein; and

That the evidence of record discloses no misapplication of Award 696 of this Division, upon which reliance is placed by the claimant.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of May, 1940.