

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

CHICAGO & NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Frank E. Martin, Dining Car Chef, for payment on basis of \$130.00 per month in lieu of \$110.00 per month, August, 1935, to December, 1937, inclusive, based on provisions of agreed to understanding had between C. & N. W. Railway officers and their Dining Car Chefs."

EMPLOYES' STATEMENT OF FACTS: "Seniority rosters of dining car chefs, C. & N. W. Railway, indicate that Frank E. Martin was promoted to chef October 15, 1927, and he was assigned to Coast trains Nos. 27-28 between Chicago and Oakland on August 1, 1935, and was given rate of pay as that of second cook, which was \$110.00 per month at that time, he being required to work for this rate up to and including November, 1937, although he was promoted and carried on chef's seniority roster eight years prior to his being assigned to trains Nos. 27-28 August 1, 1935."

POSITION OF EMPLOYES: "Below is tabulated rates of pay applicable to chefs on C. & N. W. Railway established during period July, 1925, to 1938, inclusive:

	7/1/25	2/1/32	7/1/34	1/1/35	4/1/35	1/1/38
1 year's service	\$110.00	\$ 99.00	\$101.75	\$104.50	\$110.00	\$125.00
1 to 2 yr's service	120.00	108.00	111.00	114.00	120.00	135.00
2 to 5 "	125.00	112.50	115.62	118.75	125.00	140.00
5 to 10 "	130.00	117.00	120.25	123.50	130.00	145.00
10 to 15 "	135.00	121.50	124.87	128.25	135.00	150.00
Over 15 "	140.00	126.00	129.50	133.00	140.00	155.00

It will be noted in above tabulation that men having service as chef 5 to 10 years beginning April 1, 1935, their monthly rate is \$130.00 per month or \$20.00 per month in excess of that which Chef Martin received during period of August, 1935, to December, 1937, inclusive.

"Following is list of men who were employed or promoted to chef subsequent to promotion of Frank E. Martin:

Name	Rate of Pay	Date
Joseph Weber	\$135.00 Per Month	Promoted Aug. 10, 1928
Gean Meyer	135.00 " "	" Jan. 9, 1929
L. J. Poull	135.00 " "	" Nov. 7, 1930
Ben Barker	135.00 " "	Hired Nov. 20, 1930
D. S. Garratt	125.00 " "	Promoted Mar. 18, 1931
F. Hohenhorst	140.00 " "	Hired June 14, 1931
A. C. Davis	125.00 " "	Promoted Feb. 22, 1933
Steve Mack	125.00 " "	" Mar. 31, 1934
C. C. Cato	125.00 " "	" June 17, 1934

1936, he was regularly assigned to position of chef and allowed compensation at rate of \$110.00 per month, which was the established rate at that time for chefs with less than one year's service as such. In November, 1936, when he had accumulated one year's service, his rate was increased to \$120.00 per month, the rate in effect at that time for chefs with one to two years' service in that class, and in November, 1937, his rate was increased to \$125.00 per month, the rate applicable to chefs with two and less than five years' experience.

"The basis on which Martin was compensated while employed as chef during period August, 1935, to December, 1937, inclusive, was not a departure from practice or precedent in arriving at rates applicable to employees such as chefs whose rates are determined by their accumulated service. As outlined above, the graduated basis of payment for chefs according to their service as such on this railway is predicated on rules established under provisions of Supplements 18 and 27 to United States Railroad Administration General Order No. 27 and agreement with the Association of Northwestern Dining Car Employees, and in accordance with the understood application that has been in effect since January 1, 1919.

"In this case, representative of the O. R. C. is requesting that this Board in effect establish a rule providing that rates of pay for chef-cooks be increased on basis of the employee's seniority in that class and without regard to his service therein, under the provisions of which if, in emergency, a second cook were promoted to a position of chef-cook establishing a seniority date therein as of August 1, 1935, and as a result of the emergency, worked but five days as chef-cook, then performed no other service as such prior to August 1, 1936, he would automatically be advanced to the rate applicable to a chef-cook with one to two years' service as such. It is and has been the understood and agreed to application of rules in respect to rates of pay for chef-cooks that the term 'service' used therein is synonymous to the term 'experience' and before the rate of pay for a chef-cook can be advanced from that applicable to a chef-cook with less than one year's service as such, he must actually have the equivalent of one year's service (experience) on this railway as a chef-cook.

"It is the position of the railway company that Frank E. Martin has been compensated at the proper rate for service as a chef-cook during period August, 1935, to December, 1937, inclusive, and that claim of the employee for increased compensation is not supported by schedule rules. The railway company reiterates its position as indicated in the statement of facts that the entire period involved in this claim being prior to the railway company entering into any agreement with the Order of Railway Conductors in respect to representation of dining car cooks, the case is not properly before this Board.

"It should be evident to the Board from the information indicated above that there is no justification for the claim as submitted, and the carrier respectfully requests that it be denied."

There is in existence an agreement between the parties bearing effective date of Mar. 1, 1938.

OPINION OF BOARD: The issue here involved is whether progressive rates of pay must be applied on the basis of actual service or of seniority dates under the circumstances of this proceeding. The evidence of record clearly establishes the following: that the progressive wage scales promulgated in Supplement 27 to General Order 27 of the United States Railroad Administration, effective February 1, 1920, governed the wages of dining car chefs on this property until the Agreement of March 1, 1938 was negotiated; that these wage scales were applied throughout this period on the basis of years of actual service, and were so applied without discrimination as between the claimant and other dining car chefs; that these governing wage scales as thus applied embraced the entire period of this

claim, August 1935 to December 1937, inclusive; that no protest against this application of the governing wage scales was submitted either during the period covered by this claim or prior thereto; that the Agreement of March 1, 1938 established its own scales of progressive rates of pay, but included no provision altering the established basis for the application of such wage scales; and that the claim herein was not presented until November 14, 1938, about twenty-three months after the negotiation of the Agreement of March 1, 1937, under which the old practice was continued, and about eleven months after the expiration of the period for which claim is made. These facts indicate that the claim is entirely for retroactive compensation; that this retroactive compensation covers a period during which there was no agreement between the parties and the long-established practice under Supplement 27 was in operation; and that this claim for retroactive compensation was not filed until long after the end of the period which it embraces. Since there is no showing of the violation of any agreement, and since, even if there had been a misapplication of Supplement 27, there was no timely submission of any protest, this claim must be held to be without merit.

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 does not disclose the violation of any agreement or any other circumstances adequately supporting the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of June, 1940.