

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

INTERNATIONAL GREAT NORTHERN RAILROAD CO.

STATEMENT OF CLAIM: "Protest against the use of other than dining car stewards in operation of extra dining cars between San Antonio and Mexico City."

EMPLOYES' STATEMENT OF FACTS: "On January 29, 1938, an extra Diner was used in passenger train No. 1 between San Antonio and Mexico City in order to supply the needs of additional passengers. Extra Diner No. 10241 was placed in Train No. 1 in addition to regular Diner.

"No steward used on Diner No. 10241 and waiter performed all duties regularly assigned to steward."

POSITION OF EMPLOYES: "The Committee representing the employees are quoting the following articles contained in Current Agreement with Carrier covering Dining Car Stewards.

Article 1
Scope

The following rules will govern the rates of pay, hours of service and working conditions of Dining Car Stewards, except that this agreement shall not apply to stewards on dining cars operating in through service between San Antonio, Texas, and points in Mexico.

Article 9

A—Preference to runs shall be based on seniority, ability and merit, ability and merit being sufficient, seniority shall govern. The Superintendent of Dining and Parlor Cars to be the judge as to ability and merit. Stewards accepting a position in the exercise of their seniority rights will do so without causing extra expense to the railroad.

B—Stewards accepting or now holding official or 'excepted' positions with the Carrier or Organization shall retain and continue to accumulate seniority.

C—All permanent vacancies, new positions or temporary vacancies known to be of more than thirty (30) days duration will be promptly bulletined for a period of ten days and senior applicant making application will be assigned, subject to Paragraph A of this rule.

D—In filling vacancies, the senior extra employe will be used when available, subject to Paragraph A.

that this agreement shall not apply to Stewards on dining cars operating in through service between San Antonio, Texas, and points in Mexico. (Underscoring ours.)

"It will be observed that the rule specifically excludes from the provisions thereof Stewards on dining cars operating in through service between San Antonio, Texas, and points in Mexico. The contentions of the Employees in this case are to, in effect, require the placing of Dining Car Stewards on extra dining cars between San Antonio and Mexico City, notwithstanding the fact that the rules of the wage agreement under which they are prosecuting their case specifically exempts such a situation.

"At the time this schedule was negotiated, a question arose with respect to the rates of pay and seniority of such Stewards as were on dining cars operating in through service between San Antonio and points in Mexico, and this was taken care of in a Supplemental understanding expressed in letter marked as Carrier's Exhibit 'A' reading in part:

'Respecting the application of this agreement to stewards on dining cars operating in through service between San Antonio, Texas, and points in Mexico that are specifically excluded from the proposed wage agreement under Scope Rule 1: it is understood that stewards assigned to this service shall be considered as "exempted" in applying Rule 9-(b) of the proposed agreement; further, that stewards so assigned on dining cars operating in through service between San Antonio, Texas, and points in Mexico will be governed by the hours of service as proposed in this agreement.'

"Rule 9-(b)—Promotion and seniority rule, reads:

'(b). Stewards accepting or now holding official or "excepted" positions with the carrier or organization shall retain and continue to accumulate seniority.'

"In the prosecution of this case with the Carrier the Employees have cited no rule violation of the schedule, obviously for the reason there has been none, as neither of the only two rules in the schedule made applicable by special understanding to Dining Car Stewards operating on the run in question have any bearing whatsoever in the instant case.

"In view of the fact that there has been no rule violation, no infringement upon the agreement rights of Dining Car Stewards in using a 'waiter-in-charge' in this instance, the Employees' claim should be denied."

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

OPINION OF BOARD: The scope rule of the Agreement, effective October 1, 1936, which governs the rates of pay, hours of service, and working conditions of dining car stewards on this property, expressly excepts "stewards on dining cars operated in through service between San Antonio, Texas, and points in Mexico." Since the extra diner here involved was operated in through service between San Antonio and Mexico City, the service at issue would, under this scope rule, be entirely exempt from the provisions of the Agreement. The only support, if any, for this protest, therefore, must be found in the supplementary understanding of September 18, 1936 with respect to such service. This understanding specifies that "stewards assigned to this service" will retain and continue to accumulate seniority (as in case of other "excepted" positions under Rule 9 (b)), and that "stewards so assigned" will be governed by the rates of pay (Rule 2) and the hours of service (Rule 3) of the Agreement. It is unequivocally clear that these are the only respects in which the complete removal of such stewards from the provisions of the Agreement is modified; and it is to be noted, further, that even these rules are made applicable

only to stewards actually assigned on dining cars operating in through service between San Antonio and points in Mexico. This proceeding involves no question as to accumulation of seniority, rates of pay, or hours of service, and such obligation as may rest upon the carrier to use stewards is obviously not applicable to dining cars operating, as in this case, between San Antonio and Mexico City. Under these circumstances no validity can be found to attach to this protest.

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 just or sound basis for the protest can be found either in the Agreement or in the supplementary understanding of the parties.

AWARD

Protest dismissed on the merits.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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