

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYEES
REPRESENTING DINING CAR COOKS, WAITERS-IN-
CHARGE, PANTRYMEN AND WAITERS**

**BOSTON AND ALBANY RAILROAD
(NEW YORK CENTRAL RAILROAD LINES)**

STATEMENT OF CLAIM: "Claim of the Joint Council of Dining Car Employes for and in behalf of Regularly Assigned Dining Car Crews on Boston and Albany trains 8 and 11, for compensation retroactive to February 16, 1940, when the carrier removed the Dining Service Work on those trains from the jurisdiction of the Boston and Albany Dining Car Cooks, Waiters-in-charge, Pantrymen and Waiters Agreement, and that all employes resultantly displaced by reason of this improper removal of work be compensated retroactively to the date of displacement for any loss in wages they may have suffered."

EMPLOYEES' STATEMENT OF FACTS: "On or about February 16, 1940, the carrier removed its Dining cars from trains 8 and 11 and turned over this work to the New York Central Railroad, Lessee of the property of the Boston and Albany Railroad, thereby displacing the regularly assigned Boston and Albany Dining Car crews for New York Central Dining Car crews."

"The Dining Service Employes of both carriers are covered by two separate agreements, both being held by the same organization."

"The Agreement covering the Boston and Albany employes does not include in its scope New York Central employes—who were assigned to the Dining Service work on trains 8 and 11 when carrier removed the Boston and Albany crews."

"Protest of the action was lodged with Management and conferences were held to settle the dispute. At these conferences Management agreed to cease the practice and return the Boston and Albany employes to their positions but refused compensation to the employes who suffered."

POSITION OF EMPLOYEES: "The action of Management in removing the Boston and Albany Employes from their regular assignments and replacing them with other persons not covered by the Agreement is clearly in violation of the Agreement."

"In recent awards the Third Division has constantly held that no position is abolished unless in fact duties connected with the position are also abolished. (Award 731—Docket No. TE-662 Third Division.)"

OPINION OF BOARD: Boston and Albany's dining car crews had on occasion operated west of Albany to Syracuse, or other points on the New York Central, on account of meals being in progress and not completed when the trains arrived at Albany. This resulted in the Boston and Albany's crews making considerable hourage on the New York Central.

To equalize hours made by the Boston and Albany's men on the New York Central, the Respondent, between February 16 and 29, 1940, inclusive used New York Central's crew on the Boston and Albany's trains between Albany and Boston. These two Railroads are separate and distinct carriers, and under a separate agreement with this class of employees.

There is no rule in the agreement providing for equalizing the work performed on other roads, and in the absence of such a rule the Carrier had no right to make assignments in the manner it did. Consequently, the employees who were deprived of such employment are entitled to payment therefor.

The claim in case was filed on behalf of the Boston and Albany's regularly assigned dining car employees (cooks and waiters) and covers the period February 16 to 29, 1940, inclusive. As a secondary defense the Respondent contends that all its regularly assigned employees worked 240 hours during February of 1940, unless absent from work for personal reasons, and the claim should not include extra idle men who lost time on account of the assignment of the dining car crews of the New York Central that ran over the lines of Respondent. The only concern of the Respondent under such circumstances is to see to it that the penalty is paid to the employee or employees entitled thereto. The fact that the claim was filed in behalf of the regularly assigned dining car crews, who may not have lost any time on account of this assignment of the New York Central's crew, is not material. (See Awards 893 and 1218). The Board is of the opinion that the employees who were deprived of employment under the assignment in this case are entitled to payment therefor.

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 employees involved in this dispute are respectively carrier and employees 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 Carrier violated the agreement in assigning regular Boston and Albany work to New York Central employees.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1940.