Award No. 2445
Docket No. DC-2421

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Hotel and Restaurant Employes International Alliance, Local 370, on the property of the Pennsylvania Railroad Company, for and in behalf of Waiters W. F. Gaylord, Columbus District, Richard Harris, Chicago District and G. E. Sleigh, New York District, et al, to be reimbursed in the total amount charged and deducted from their wages for meals retroactive to March 1, 1941, as a result of carrier's arbitrary action of establishing a charge for meals, served employes in the Dining Car Department without conference or agreement with the representatives as provided in the agreement and the amended Railway Labor Act.

EMPLOYES' STATEMENT OF FACTS: For a number of years past, the dining car employes in the Dining Car Dept. of the Pennsylvania Railroad Company, have been provided meals free of charge. On October 24, 1938, the Federal enactment known as the "Fair Labor Standards Act of 1938" became effective. Acting under the provisions of that Act, the Administrator, Wage and Hour Division, U. S. Department of Labor, effective March 1, 1941, issued a wage order establishing a minimum hourly rate of not less than 36 cents per hour for all employes in the Trunk Line Division of the Railroad Carrier Industry.

W. F. Gaylord, G. E. Sleigh, Richard Harris and et al., prior to March 1, 1941, were receiving $77.00 month.

Under the terms of the Wage Order of March 1, 1941, the carrier was required to pay these employes not less than 36 cents an hour. During the period March 1, 1941, to Sept. 1, 1941, in calculating wages due the claimants carrier took credit for meals and lodging furnished the claimants, which petitioner now contends was contrary to and in violation of the mutual understanding of October 1, 1936, to the effect that carrier would furnish these claimants with meals at its own expense.

POSITION OF EMPLOYES: Prior to Feb. 12, 1936, the claimants herein involved were represented by an independent association known as the Brotherhood of Dining Car Employes. This organization held an agreement with the carrier covering the class and craft of employes of which the claimants herein involved are members. No written provisions were included in the agreement respecting meals or lodgings furnished the employes covered thereby—but it was mutually understood that the carrier would so provide them at no expense whatsoever to the employes. Carrier fully complied with its part of such understanding and for many years did provide meals and lodging to these employes.

Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

It is respectfully submitted that the Carrier's action in this matter does not constitute a violation of the applicable Agreement, and, consequently, that the Claimants are not entitled to the reimbursement claimed.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

OPINION OF BOARD: The facts of this claim are indistinguishable from those of Awards Nos. 2098, 2206, 2207 and 2208. The Carrier contends that certain of those awards are not applicable to this claim in that the Agreements included the Carrier's specific promise to provide board and lodging in addition to the cash wages. That difference applies to some of them but is immaterial, since if Section 3 (m) of the Wage and Hour Law is applicable it relates to meals "**customarily** furnished," and not merely to those which are required to be furnished under the Agreement.

The Carrier also contends that the claimants are not within the class affected by the Wage and Hour Law; but they appear to be the same as involved in the said four awards.

It should be noted also that the record does not disclose that the reasonable cost of the meals has been determined by the Administrator so as to be entitled to be included in the computation of "wage paid," under Section 3 (m).

Being indistinguishable from the above awards of this Division, it is governed by them, and the claim must therefore be sustained.

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 the dispute involved herein; and

That there has been a violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of January, 1944.

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Prior awards, declared to be indistinguishable from and governing in decision here, included this statement in the opinions therein:

> "If the merits of this claim were before us as a new question we should feel compelled to deny the claim on the theory that the 'wage' paid by the carrier to the employes under the Agreement complied with the Administrator's order and that the Agreement, therefore, was not modified by the order." (Award No. 2206, et al.)

Such opinion thus not being distinguished in arriving at the instant award, it is our view that the instant award, rather than being governed by those prior awards, admitted to be questionable, should have been the result of correct construction of the Agreement.

This Board is not bound to perpetuate error found in prior awards.

(s) C. C. Cook
(s) R. F. Ray
(s) A. H. Jones
(s) C. P. Dugan
(s) R. H. Allison