

Award No. 2907

Docket No. DC-2882

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 351
NEW YORK CENTRAL RAILROAD SYSTEM**

STATEMENT OF CLAIM: Claim for and in behalf of Mr. Claude Harris that he shall be paid the difference between what he was paid as waiter and what he should have been paid as lounge car attendant for all time that he performed services as lounge car attendant and was paid the lower rate of waiter.

EMPLOYEES' STATEMENT OF FACTS: Rule No. 4 of the current agreement between the Carrier and our International Union provides in paragraph (b) thereof as follows:

"(b) Classification

For the purposes of applying seniority, the employes covered by this agreement shall be divided into classes as follows:

| General Classes | | Seniority Classes | |
|--|--|---|--|
| Cooks | | (1) Chefs | |
| | | (2) Second Cooks | |
| | | (3) Third Cooks | |
| | | (4) Fourth and Fifth Cooks | |
| Waiters | | (1) Waiters-in-Charge, and Coach-Buffer Attendants | |
| | | (2) Pantrymen, Waiters, Out-of- Car Waiters, and Lounge Waiters | |
| | | (3) Bartenders | |
| Parlor Car and Train Porters on trains such as the "Mercury," "Pacemaker," and "Empire State Express," and similar trains on which special services are required (excluding Pullman Cars when operated in any train) | | (1) Parlor Car Porters | |
| | | (2) Train Porters | |

The Schedule of Rate of Pay, effective December 1, 1941, and which were in full force and effect at the time of the instant Claim originated:

| "Mercury Runs" | Monthly | Hourly |
|--------------------------|----------|-----------|
| Head Chefs | \$206.00 | \$0.85833 |
| Swing Chefs | 181.00 | 0.75417 |
| Second Cooks | 161.00 | 0.67083 |
| Third Cooks | 146.00 | 0.60833 |
| Fourth Cooks | 121.00 | 0.50417 |
| Fifth Cooks | 121.00 | 0.50417 |
| Bartenders | 146.00 | 0.60833 |
| Lounge Waiters | 106.00 | 0.44167 |
| Pantrymen | 106.00 | 0.44167 |
| Waiters | 103.60 | 0.43167 |
| Out-of-Car Waiters | 107.00 | 0.44583 |

1943, that "We do not recognize any verbal understandings which conflict and supersede the context of the existing agreement." Said letter of July 29, 1943, is shown as Carrier's Exhibit No. 2.

McGill Simms was still the System Chairman of Local No. 351 on July 29, 1943, when the Exhibit No. 2 was written, but Committeemen Jones and Seltzer had obviously taken the "ball" out of his hands. They were apparently not satisfied with the understanding agreed to by System Chairman Simms and the undersigned, under which the lounge waiter classification was to be established on the JAMES WHITCOMB RILEY, and therefore they decided not to recognize the validity of that settlement on the ground that it was a "verbal understanding in conflict with the agreement." They never attempted to explain, though, why they did not make some kind of protest when Claude Harris was assigned as waiter on August 24, 1942, why they did not object immediately when Committeeman Simms entered into the "verbal understanding" in the early part of 1943, why they did not protest when Waiters Black and Barclay were assigned to the lounge waiter positions in May 1943, and why it took approximately eleven months (August 24, 1942 to July 1, 1943) to conclude that their agreement was being "violated."

Reverting again to their letter of July 29, 1943 (Carrier's Exhibit No. 2), that Board should note that Committeemen Jones and Seltzer did not take the stand that **there was no understanding** between the undersigned and Committeeman Simms, but they contended that "verbal understandings" which conflicted with an agreement rule had no standing. In other words, they said there that the "verbal understanding" with System Chairman Simms was not recognized as a valid settlement. As a matter of fact, there was no conflict with any rule of the agreement.

Some weeks later Committeemen Jones and Seltzer apparently brought pressure to bear on Committeeman Simms to repudiate the "verbal understanding," as the undersigned received a letter from Simms bearing date of November 6, 1943 (received by me on November 13, 1943) copy of which is shown as Carrier's Exhibit No. 3. Simms' letter is equivocal and obviously does not deny what he and the undersigned discussed and settled at our meetings on December 2, 1942, and January 29, 1943. There was no claim on behalf of Claude Harris at that time, but the matters under consideration were Simms' request that the undersigned agree to establish the lounge waiter classification on the JAMES WHITCOMB RILEY to assign two lounge waiters to service on the RILEY. Nowhere in Simms' letter of November 6, 1943, is there anything constituting a denial of those matters or the agreed upon disposition of them.

Shortly after November 6, 1943, McGill Simms vacated the office of System Chairman but whether through voluntary or forced action we are unable to say.

CONCLUSION: The facts and arguments hereinbefore presented conclusively show that—

1. The claim in this case has no proper standing before the Board, and therefore it should be dismissed.
2. No rule of the agreement was violated and none was improperly applied.
3. There is no foundation whatever for the claim as presented to the Board.

OPINION OF BOARD: Based on all of the facts and circumstances of this particular case, the Board is not disposed to disturb the action of the Carrier.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employees 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 action of the Carrier will not be disturbed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 4th day of May, 1945.