Award No. 3448

Docket No. DC-3447

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local No. 495, on the property of the Atlantic Coast Line Railroad Company that the Carrier has violated and continues to violate the current agreement, particularly Rule (1), paragraph (L) thereof, by refusing to post, as required by said rule, the name of each regularly assigned employe showing the crew and group to which assigned, and that such violation of said agreement permits Carrier to ignore other sections of said agreement, particularly the filling of vacancies and new positions provisions thereof; wherefore the Joint Council Dining Car Employes requests your Board to give effect to said rules by interpreting same and ordering Carrier, respondent herein, to comply therewith. No monetary claims are involved.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement dated effective September 1, 1944, copies of which are on file with your Board, which provides in Rule (1), paragraph (L) as follows:

> "Schedule of dining car runs and assignments for regularly assigned employes will be posted in accessible places in the Washington and Jacksonville Commissaries. The schedule shall show the reporting and release time which shall include necessary time for stocking and preparation."

Paragraph (L) of Rule (3) of said agreement provides:

> "New Positions or vacancies on year round runs will be bulletined for a period of fifteen (15) days in the seniority district in which they occur. Bulletins will be posted in places accessible to all employes and will show location, title and tour of duty. After the expiration of the fifteen (15) day period, the new position or vacancy will be awarded to the successful applicant within the next ten (10) days. The name of the successful applicant will be posted in the same manner where the vacancy was bulletined. New Positions or vacancies of less than thirty (30) days duration shall be considered temporary and may be filled without bulletining."

The Carrier maintains that Rule (1), paragraph (3), merely requires them to post a schedule showing, train numbers, the groups, or couplets, of said trains in each regular run and reporting and release times. The employes on the other hand, contend that said rule, in addition to all those things admitted to be required by the Carrier, also requires that the name of each regularly assigned employe and the group or couplet, to which he is assigned shall be shown.

tive of the employes to check with the Commissary Department employe handling the assignment of crews as to the names of the crew members on numerous dining cars, not only for the crews originating at Washington, but those leaving New York, Miami and other points. The same thing holds true with individual employes making inquiry, and for the information of the Board the dining car officers at Jacksonville, Miami and New York are also called upon and do furnish such information to the employes upon request. With the above information, it will be seen that there is no lack of information available to the employes as to the consist of dining car crews on any given run.

The Third Division of the National Railroad Adjustment Board has repeatedly held that its function is to consider disputes growing out of grievances, or out of interpretation or application of agreements covering rates of pay, rules and working conditions, and that it has no power or right to make rules or to interpret rules that have not been negotiated between the parties at interest. It has also held that disputes will not be considered by the Board until after they have been progressed on the property by the parties at interest. Here is a case where the employes, who made claim which the Carrier very properly declined, have now appealed to this Board to interpret a provision of the current agreement in such manner that it will have the effect of writing a new rule into the agreement. The employes are attempting in this manner to secure through an interpretation of the Board the benefit of a rule which has not been secured through negotiation between the parties, in accordance with the Railway Labor Act. They are also attempting to have this Board issue a decision favorable to them in a case that has not been handled on the property, that is, the general complaint that the rules are being violated, etc. The Carrier submits that this case should be dismissed on the following grounds:

(a) That the Carrier has properly interpreted the provisions of Paragraph (L) of Rule 1 of the current agreement and is complying therewith.

(b) That the general complaint as to violation of rules, such rules not being identified in the complaint made by the employes, is not before the Board because such complaint has not been handled on the property.

The respondent Carrier reserves the right, if and when it is furnished with the ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such position and which have not been answered in this, its initial answer.

OPINION OF BOARD: This dispute arises over the meaning of a rule in the current agreement. Rule 1-(L) requires Carrier to post in accessible places in the Washington and Jacksonville commissaries a "schedule of dining car runs and assignments of regularly assigned employes".

Carrier asserts it fully complies with the rule by posting a schedule of regularly operated dining cars.

Petitioner contends this is not full compliance, and that the names of each employe regularly assigned in a given group of couplet of trains must also be posted.

Petitioner's contention is sound and must be sustained. Carrier's position limits the application of the rule merely to posting a "schedule of dining car runs", and ignores the further requirement of posting "assignments for regularly assigned employes". The latter requirement is clear, has definite meaning, and may not be ignored. Accordingly Carrier should fully comply with the rule as written.

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 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 Carrier has violated the agreement.

AWARD

Claim sustained in conformity with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of March, 1947.