Award No. 4357
Docket No. DC-4315

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Locals 41, 456, 582, on the property of the Southern Pacific Company (Pacific Lines) that:

(1) The Carrier violated and continues to violate the current agreement, particularly Rule 14 (b) thereof by the assignment of a dining car Steward Mr. Olsen, who holds no rights under said agreement to perform the duties of Bartender on trains No. 51 and 52, during the months of January and February 1948, and—

(2) That the eligible bartender, who may have been available and who should have been called to perform these duties, or the senior available Lounge Car Attendant, who in the event no Bartender was available should have been called to perform the duties assigned to Mr. Olsen, be now compensated to the full extent suffered, namely the hours earned by Mr. Olsen during the months of January and February on Trains 51 and 52 as set forth in (1) hereof.

EMPLOYES' STATEMENT OF FACTS: *During January and February,* 1948, Mr. Olsen, a dining car steward, was assigned by the Carrier to perform the duties of bartender on trains numbers 51 and 52. The work of "bartenders" is covered by an agreement between the Carrier and this organization, effective December 1, 1947. Dining Car Stewards are covered by an agreement between this Carrier and the Brotherhood of Railroad Trainmen. There are not provisions in said agreements under which dining car stewards are to perform the duties of bartender.

Under date of February 6, 1948, the employes organization filed the instant claim with the Carrier charging violation of the current agreement, particularly Rule 14 (b) thereof, requesting compensation for the employe who should have been called to perform the duties assigned to Mr. Olsen.

Conference upon this claim was held with the Carriers' Superintendent of Commissary on February 27, 1948, at which time Carrier took the position that the Employes Representatives were not proper parties to bring complaints. Carrier based its position upon Rule 26 of the Current Agreement and insisted that said Rule demanded that the Employes must personally file their own claims and, therefore, no claim was properly before the Carrier.

Appeals were taken in the usual manner, up to and including the "chief operating officer" designated by the Carrier to handle such matters, Carrier,

of Turner and Black by reason of custom or verbal agreement. He found that no valid agreement, either verbal or written, granting the appellants such seniority had ever been consummated. The evidence shows without contradiction that the Station Company employed as electricians in 1945 McDaniel and Vehine, without either of them having been previously employed as helpers. * * *"

The principle here clearly annunciated fully supports the carrier's position that an employe who holds seniority in the seniority class designated lounge car attendant does not by reason of such fact have the right to promotion to and to perform work in another seniority class (bartenders) in which he does not hold seniority.

CONCLUSION

The carrier has demonstrated, conclusively, that no proper claim has been presented to the carrier for consideration; that there is however no basis for a claim under the agreement; that the assignment of Mr. Olsen to the service in question was not in violation of the current agreement but to the contrary was in compliance with the agreement. If this Board assumes jurisdiction of the dispute, we submit that the Board must deny same on the grounds that it is entirely without merit.

OPINION OF BOARD: During January and February 1948 Carrier assigned one Charles G. Olsen, a former Dining Car Steward, to perform the duties of bartender on its trains Nos. 51 and 52. Mr. Olsen at the time of his first assignment as bartender held no seniority rights under the Agreement. Employes file claim as indicated.

Carrier has raised a jurisdictional question asserting that bartenders or lounge car attendants are not dining car employes and hence this Division of the Railroad Adjustment Board has no jurisdiction under Section 3, First, (h) of the Railway Labor Act. We cannot agree with that contention. We believe it is settled by usage and National Mediation Board rulings on craft determinations that lounge car attendants or buffet car porters, as they are sometimes called, and bartenders are a part of the craft or class of dining car employes. That being so, this Division has jurisdiction under the above referred to Section of the Act.

It appears that no employes holding seniority as bartenders were available for the assignments on which Carrier had employed Mr. Olsen so that the issue presented for determination is whether or not Carrier was obliged under the terms of the Agreement to use the senior available lounge car attendant on the vacancies which were filled by Mr. Olsen. It further appears that the vacancies to which Mr. Olsen was assigned were temporary vacancies or new positions of less than 30 days known duration, hence the question of assigning an individual holding no seniority under the Agreement to a regularly assigned position is not involved.

The involved Agreement sets up ten different seniority classes. Bartenders and lounge car attendants are in separate seniority classes. For all other seniority classes enumerated in the Agreement, two seniority districts, Northern and Southern, are established, while bartenders are all embraced in one seniority district. The Agreement provides that the seniority of an employe is restricted to the seniority classes and to the seniority district in which he has acquired seniority. There is no Promotion Rule in the Agreement.

Employes rely on Rules 14 (a) and (b) and 15 (e) of the Agreement to substantiate their claim, which Rules read as follows:

"Rule 14.—Qualifications for Filling Positions or Vacancies.

(a) The principle of seniority shall be adhered to, but nothing in this agreement shall be construed to require that seniority be applied so as to impair the efficiency of service to be rendered to the company or to the public.

(b) All positions and vacancies, covered by this agreement, shall be filled by the appointment of the best qualified individuals based on ability, fitness and seniority. Because of the type of service required of employes in streamliner trains and train bartenders in filling these positions, due consideration must be given to the requirements of service and, in the selection by the company of employes for these positions, its rights are in no way abridged to require employes to establish to the satisfaction of the Management, the posseession of proper qualifications to fill these positions prior to being assigned thereto. The Superintendent of Commissary (hereinafter referred to as Superintendent) shall be the judge of an employe's qualifications to fill a position or vacancy, subject to appeal to Manager of Dining Cars, Hotels, Restaurants and News Service (hereinafter referred to as Manager) and final decision shall rest with the Manager."

"Rule 15.—Advertising Positions and Vacancies.

(e) A new position or vacancy, of less than 30 days known duration, may be filled, at the option of the company, by any qualified employe. An employe requested to fill a temporary assignment under this rule shall not be excused unless he can prove reasonable cause for not filling the assignment. In the event a regularly assigned employe is used he shall be compensated for such service at the rate of pay of said position or vacancy or at the rate of pay of his regular position, whichever is greater, and such compensation shall constitute full and complete payment during such period on the position on which he is used or on his regular position, whichever will produce the greater compensation."

Under the seniority rules written into the Agreement it would appear that lounge car attendants, being restricted as they are to the seniority class and district in which they had acquired seniority, would have no preferential right to temporary vacancies as bartenders. The Agreement as written restricts seniority to lounge car attendants as among themselves. The provisions of Rule 14 when read in conjunction with Rule 15 (e) indicate that much latitude was given to the Carrier in the choice of employes to fill temporary vacancies, and the Agreement seems to take cognizance of a situation where no eligible employes holding seniority in a particular class are available for service in the provisions of Rule 10 (a) which reads as follows:

"Rule 10.—Acquisition of Seniority.

(a) Persons entering or reentering the service of the company and employes of the company who transfer from positions not covered by this agreement to positions covered by the agreement shall acquire seniority in the seniority class and seniority district to which initially assigned after the performance of ninety (90) days of compensated service in positions covered by the agreement. Seniority thus acquired shall date as of the initial date service was performed in such seniority class."

Thus an avenue was left open to the Carrier to bring in new employes or old employes who had resigned to perform work which was subject to the Agreement and acquire seniority in the class and seniority district to which initially assigned. That was what was done in this case by the hiring of Mr. Olsen.

While we feel that employes who have rendered service in a lower classification covered by an Agreement should have preference over new people or employes not covered by the same Agreement in filling vacancies in higher rated position, to sustain the claim herein would require us to write a new Rule into the Agreement by interpretation, something which this Board has no power to do. Accordingly, the claim must be denied.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.