Award No. 5119
Docket No. DC-4974

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes, Local 582, on the property of Southern Pacific Company (Pacific Lines) for and in behalf of William C. Struggs, lounge car attendant, that he be compensated for the difference between Lounge Car Attendants rate and what he actually was paid from August 15, 1948 to January 24, 1949 and from January 24, 1949 to date in accordance with the provisions of the current agreement.

EMPLOYES' STATEMENT OF FACTS: Prior to and after August 15, 1948, Claimant was regularly and continuously employed by Carrier as a lounge car attendant. On and after August 15, 1948 and on and after January 24, 1949, Carrier assigned lounge car attendant work to others than Claimant in the Northern Seniority District as such district is defined in Rule 11 in the current agreement. At all times material to the instant claim Claimant had ranking seniority in Seniority Class 8 as such class is defined in Rule 12 of the current Agreement.

On and after August 15, 1948, Carrier substituted Lounge Car 2920, operating on Carrier's San Joaquin Daylight Train, for tavern car. On and after January 24, 1949, Carrier assigned lounge car attendant work on Lounge Car 2975, City of San Francisco, to employes other than Claimant when he held ranking seniority in Seniority Class 8—Lounge Car Attendant.

POSITION OF EMPLOYES: Carrier violation of the agreement which is the basis for the instant claim, is that Carrier assigned work in the class or craft properly falling within that in which Claimant held seniority to employes holding no seniority therein. Carrier substituted lounge car in service as replacement for tavern car. However, instead of permitting Claimant to perform the work which he formerly did perform on the lounge car substituted for tavern car, Carrier assigned train bartenders to work the lounge car. The type of service rendered in the lounge car was the same both before and after it was substituted for tavern car, as set out above.

It is contended that Carrier is required by Rule 12 to assign work on lounge cars to employes holding seniority in Class 8. This it failed to do. Carrier makes no contention that it failed to assign work to Claimant because of Claimant's lack of qualification to perform such work which is the only exception provided in the agreement permitting Carrier to depart from seniority ranking in assignment work. In this posture of the instant claim it is apparent that Carrier improperly assigned lounge car attendant positions

ingly submits that if the claim were otherwise valid, which the carrier emphatically denies, the claim can not exist beyond October 1, 1949, the last date on which train bartenders were employed on the SAN JOAQUIN DAYLIGHT trains.

5. IF, FOR ANY REASON, LOUNGE CAR ATTENDANTS HAD BEEN OR SHOULD HAVE BEEN USED ON THE SAN JOAQUIN DAYLIGHT TRAINS DURING THE PERIOD OF THE CLAIM, THERE WOULD STILL BE NO VALID CLAIM IN BEHALF OF WILLIAM C. STRUGGS.

The claimant's name appears as No. 31 on current seniority roster (copy attached as Exhibit E) of 43 lounge car attendants at West Oakland Commissary, and his seniority date as lounge car attendant is December 1, 1944.

Positions coming within the scope of the current agreement on the SAN JOAQUIN DAYLIGHT trains are of such a preferred nature that the successful applicants (the assignments being made to the best qualified applicants on the basis of ability, fitness and seniority, as provided in the agreement) for such positions are employes with considerable seniority standing, and the carrier submits that if for any reason a lounge car attendant had been assigned to the SAN JOAQUIN DAYLIGHT trains during the period of the claim, an employe other than Struggs would have been assigned to the position.

The above statements are best proven by the fact that when revision of train service effective October 2, 1949, resulted in establishing lounge car service on the SAN JOAQUIN DAYLIGHT trains, fourteen qualified lounge car attendants (including the claimant) made application for the position, eight of the qualified applicants being senior to the claimant. In fact, the applicants to whom the positions were awarded (whose names appear as Nos. 4, 10 and 11 on the current seniority roster) have seniority dates as lounge car attendants of August 28, 1926, January 16, 1930, and January 19, 1930, and are senior to the claimant by fourteen to twenty-three years.

CONCLUSION

The carrier has conclusively demonstrated (1) that the case is closed under the time limitation provisions of the current agreement, (2) that even if the claim were not closed it is entirely without merit and should be denied, and (3) if there were any merit to a claim in behalf of lounge car attendants—which the carrier denies—there could be no valid claim in favor of the claimant named in this docket.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant holds seniority with the Carrier as a lounge car attendant. The Carrier found it necessary to use a lounge car as a tavern car. The record establishes that the same duties were performed in the substituted lounge car as had been performed in the tavern car. Claimant contends that he should have been assigned to the lounge car on and after August 15, 1948 as lounge car attendant instead of the tavern car attendant who was assigned. He claims the difference in rate for the period of the claim.

The claim has no merit. The duties performed on the substituted lounge car were those of a bartender, a tavern car employe, and not those of a lounge car attendant. It is the duties involved rather than the type of car used which determines the classification of the employe to be assigned. Awards 2693, 4067, 4125, 4357. The work involved being that of a bartender even though performed on a lounge car, no basis for claim exists.

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 Agreement was not violated.

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 November, 1950.