

Award No. 6031

Docket No. DC-5586

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 354, for and on behalf of George Dwellingham, Herman Dwellingham, W. J. Edmonds, Elmo Johnson, Garrett Lindsay, Maxie D. Walker, Waiters-in-Charge, and all other Waiters-in-Charge similarly situated, on the property of Missouri Pacific Railroad Company that they be restored to the positions held by them on and prior to November 24, 1949, on Trains 7 and 8 and 14 and 15, and on such other trains as may be applicable, on which date Carrier displaced said named Waiters-in-Charge in violation of current Agreement and established custom and agreement, forming a part thereof, that they be restored with compensation for net wage loss suffered and with seniority accumulated and unbroken; said claim is presented pursuant to decree of United States District Court for the Eastern District of Missouri Eastern Division, in Dwellingham, et al vs. Thompson, et al, Civil Action No. 6917(1).

EMPLOYEES' STATEMENT OF FACTS: Under date of October 24, 1949, Guy A. Thompson, Trustee for the Carrier and his employees, represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen, entered into an agreement, attached hereto as Employees Exhibit "A". Said Agreement established a Special Board of Adjustment to determine and adjust a number of grievances and claims of Employees of the Railroad represented by the above-named organizations. Appended to said Agreement was a document entitled "Appendix A" listing a number of claims including the following:

"Protest of Dining Car Stewards account discontinuing stewards on train 1 and 101 and trains 102 and 2 between St. Louis and Lake Charles, and on trains 119-110 between Kansas City and Omaha with employees who hold no seniority as Dining Car Stewards."

Subsequently said Special Board of Adjustment considered the above set out claim and under date of November 21, 1949 rendered its Award thereon. Copy of said Award, Statement of Claim pertaining thereto, and Findings and Opinion in support thereof is attached hereto as Employees' Exhibit "B".

4. The Award of the Special Board of Adjustment had no application beyond **the factual situation and the trains involved in the protest**, designated Case No. 1131 — BRT 392, submitted to said Board.
5. The practice on this Carrier since the time Dining Cars were first used clearly establishes the understanding and intent of the parties that the Carrier retained the inherent right to interchange Stewards and Waiters-in-Charge in the exercise of managerial discretion.

All matters contained in this submission have been the subject of discussion in conference and/or correspondence between the parties to this dispute on the property.

This claim should, therefore, be denied as being entirely without support under the provisions of the agreements, and wholly without merit as a matter of equity.

(Exhibits not reproduced).

OPINION OF BOARD: After claimants were displaced from positions as waiters-in-charge on trains 7 - 8 and 14 - 15, they filed an action in the United States District Court for the Eastern District of Missouri, Eastern Division, and pursuant to a decree of that court they were restored to the positions from which they were displaced. The court there held such displacements to have been caused by a Special Adjustment Board Award and not due to the exercise of managerial discretion.

The decree referred to contains the following provision:

"4. The foregoing injunction shall be in full force and effect pending determination by the National Railroad Adjustment Board of the question of jurisdiction as to the disputed positions as between plaintiff waiters-in-charge and the defendant stewards, or for a reasonable time within which the plaintiffs, through their labor organization representative, may invoke the jurisdiction of that Board."

The parties agree that the use of a waiter-in-charge or a steward is a matter of managerial discretion under the existing contract. We cannot exercise that discretion nor write new rules into the agreement. Hence whether a waiter-in-charge or a steward is to be used to fill the positions involved is a matter for determination by the management in the exercise of its discretion.

The claim for compensation for net wage loss suffered was not filed until November 27, 1950, and under Rule 17 (j) is effective only from that date. Since claimants were already restored to their positions no subsequent wage loss is shown. The employees urge that their letter of protest against the displacement should be considered notice to the carrier of the monetary claim, but we are bound to enforce clear contract provisions fixing time limits on claims. The provisions here involved are clear and unambiguous and we are unable to construe the letter of protest as a monetary claim under such contract provisions.

The claim here is for restoration and compensation for net wage loss. Since the original displacement has been corrected by the restoration of claimants to their jobs and since there are no valid monetary claims, 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 Employees involved in this dispute are respectively Carrier and Employees 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 any violation of the agreement has been corrected.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1953.