

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of Dining Car Steward, Northern District, standing to be used for service on Overland Limited, Train No. 27, in Coffee Shop Car, March 10, 11, 22 and April 8, 1952, for earnings he would have received if used for such service, in addition to all other compensation received for service performed on those dates.

EMPLOYES' STATEMENT OF FACTS. On March 10 and 11, 1952, the crew consist in dining-room section of Coffee Shop Car on Train No. 27 (Overland Limited) was 4 employes including a waiter-in-charge.

On March 22 and April 8, 1952, the crew consist in dining-room section of Coffee Shop Car on Train No. 27 (Overland Limited) was 3 employes including a waiter-in-charge.

A dining car steward was not employed on the Coffee Shop Car in Train No. 27 on the dates involved.

Claim presented as set forth in the "Statement of Claim" was denied by the Carrier.

POSITION OF EMPLOYES: This claim was submitted to the carrier's assistant manager of personnel by employes' general chairman under date of October 21, 1952, discussed in conference with carrier's assistant manager of personnel, November 12, 1952, and denied by the carrier's assistant manager of personnel by letter dated November 14, 1952, copies of submission and denial of claim are attached hereto as Employes' Exhibit "A"

Under date of November 18, 1952, the employes' general chairman advised carrier's assistant manager of personnel that his decision was not accepted, notified him that the claim would be referred to the National Railroad Adjustment Board, Third Division, for decision and requested carrier to join in the submission.

Under date of December 17, 1952 file DC 152-17, carrier's assistant manager of personnel agreed to join in the submission, providing joint statement of facts could be agreed upon.

Under date of December 19, 1952, employes' general chairman submitted a proposed statement of claim and joint statement of facts to carrier's assist-

The petitioner is simply attempting to secure through an award of this Division an agreement provision over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, the carrier respectfully submits that within the meaning of the Railway Labor Act, the instant claim involves request for change in Agreement, which is beyond the purview of this Board. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without basis or merit, and therefore, request that said claim, if not dismissed, be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: After once dismissing the instant claim without prejudice for failure to give due notice, the Board enlarges upon what it once confessed to be error and again has permitted the case to go to hearing without giving the notice found by Award 6680 to be lacking and therein held to be necessary.

The parties who have progressed the dispute to hearing appear to be agreed that other parties are involved and are entitled to notice. Hence the giving of such notice amounts to only a ministerial act which the Board is under a duty to perform.

Therefore, under the facts and circumstances of record, the dispute is not at issue and cannot be heard and decided until the defect once found to exist in the record has finally been cured and that will be the findings and award at this time.

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 the dispute is not at issue.

AWARD

Hearing and decision on the merits deferred pending due notice to the other party or parties involved.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1956.