Award No. 8771
Docket No. CL-8338

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that

(a) The Carrier violated and continues to violate the Agreement at Atlanta, Georgia by using Dining Car Cooks and Waiters, employes of a separate class or craft, to perform work regularly assigned to and performed by employes covered by the effective Agreement, and

(b) Claimants P. A. Love, H. Cotton, C. B. Tatum, R. Maddox, L. A. Harbison, C. E. Munday, Jack Lloyd, O. C. Dotson, and all others on the seniority roster, their substitutes or successors, shall now be compensated at proper rate of time and one-half for all time Claimants' positions were worked from June 30, 1952 forward, by the members of the separate class or craft aforesaid.

EMPLOYES' STATEMENT OF FACTS: Claimants are employed as Laborers, or Porters, in the Carrier's Dining Car Department Commissary, Atlanta, Georgia. The Claimants hold seniority in Group 5 as between themselves in the office or warehouse at that point, (Employes' Exhibit "1"). In February 1948, it was discovered that Dining Car Laborers were assigned one rest day in seven, as the Agreement then provided, but that on such rest days, Dining Car Cooks and Waiters, members of another class or craft holding seniority and working under another Agreement, were occupying Claimants' positions. Claim was filed February 18, 1948, (Employes' Exhibit "2"). The improper practice of using members of another craft or class was stopped shortly thereafter. See letter of the Division Chairman dated April 19, 1948 stating:

"I note with interest the last paragraph of your letter wherein you state that the Agreement is not now being violated. As far as I can ascertain this is true, however, I am of the opinion that it should never have been violated."

and one-half rate. There is no basis or justification whatever for any such contention. Nowhere in the agreement is there any restriction against the use of extra employes to fill such vacancies. To the contrary, the agreement expressly provides for the use of extra employes in all groups covered by the clerical agreement.

The using of furloughed or extra employes of one craft to perform work in another craft or class is by no means a new practice. On page 102 of the effective agreement there appears a Memorandum of Understanding between the parties dated October 19, 1940 with respect to the status of furloughed employes securing employment in another class or craft. The sum and substance of the memorandum is that a furloughed employe covered by the clerical agreement will not lose his seniority if he obtains employment in another craft subject to another agreement under which he may acquire seniority; but if he stands for a regular assignment in accordance with his seniority and qualifications, he will be notified and must elect whether he will return to the class of service from which he was furloughed, or forfeit his seniority. A similar arrangement is in effect for furloughed employes of other crafts. This procedure is used by the Dining Car Department in the use of cooks and waiters in the commissary. If they stand for a regular assignment as cook or waiter, they must protect the service or forfeit their seniority.

SUMMARY

The claim which the employes have presented in this case is not supported by the provisions of the effective agreement.

The practice of using extra cooks and waiters to perform extra work as commissary porters is one of long standing, was in effect prior to transfer of the Dining Car Department to Atlanta, Georgia, in 1942 and has remained in effect since that time. The clerical agreement makes ample provision for the use of extra employes to perform extra work in each of the five groups embraced in the scope of the clerical agreement.

There is no requirement that the Carrier must use regularly assigned commissary porters on their rest days to fill temporary vacancies, vacation vacancies, etc., when extra porters are available for such work.

The evidence does not justify an affirmative award and Carrier respectfully requests that the claim be denied.

All pertinent facts and data used by the Carrier in this case have been made known to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim and the record as a whole, as presented to the Board, are very confusing; however, after a very lengthy and careful review of the record, it is concluded that the Agreement between the parties has been violated, and the claim will be sustained only for the claimants named in Section (b) of the claim, and said claimants will be compensated in accordance with the following:

It appears from the record before us that the parties agree generally on the issues to be determined here. The record discloses that the first claim presented to the Carrier was dated June 30, 1952, and covered the period from June 4 to June 22, 1952, inclusive, and that the second claim presented to the Carrier was dated July 19, 1952, and covered the period from June 24 to July 10, 1952, inclusive. Claims as made are for alleged violations of the effective

Agreement by Carrier for the continued use of extra dining car cooks and waiters, to perform the work of claimants on their regularly assigned rest days or vacancies, in the absence of regularly assigned porters.

The claim will be sustained for the claimants named in Section (b) of the claim for the days the Carrier used employes other than those covered by the Clerks' Agreement, to perform the work of claimants on their regularly assigned rest days or vacancies, for the days involved, from June 4, 1952, to July 10, 1952, inclusive, at the pro rata rate, except if any day fell on a holiday, the employe shall be compensated therefor at the time and one-half rate.

The employes, other than those holding dual seniority on the claim dates, used by Carrier on regularly assigned rest days or vacancies, are not members of the Clerks' Organization, but belong to a different craft.

Carrier, as shown by the undisputed record, has used some employes of another craft to perform the work covered by the Clerks' Agreement.

This Division has in numerous awards held consistently that an employe of another craft or class has no right to relieve employes on their day of rest or vacancies. See Awards 6855, 5240, 6853. Such action on the part of Carrier in using employes of another craft is improper and clearly constitutes a violation of the effective Agreement.

Since Carrier has wrongfully used some employes of another craft to relieve clerical employes, as above stated, it is not necessary to consider the contentions of Carrier in resisting the claim.

While the claim should be sustained, in view of numerous awards by this Division, only the pro rata rate of pay shall apply herein, except if any day fell on a holiday, the employe shall be compensated therefor at the time and one-half rate.

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 violated to the extent stated in the Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1959.