Award No. 11455

Docket No. DC-11001

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES LOCAL 370

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union Local 370 on the property of Boston & Albany Railroad for and on behalf of:

(1) Waiter Jerry Boyd for pay March 4, 5 and 6, 1958, Trains 27 and 28, failure Carrier to assign claimant to established position, vacancy existing and claimant being first out on extra list, claimant being available and not used.

(2) Waiter Joseph Canady for pay February 4 and 5, 1958, Train 27, failure position, vacancy existing and claimant being first out on extra list, claimant being available and not used.

EMPLOYES' STATEMENT OF FACTS: On March 13, 1958, Organization submitted claim on behalf of claimant in Claim 1 (Employes' Exhibit A).

On February 13, 1958, Organization had previously submitted claim on behalf of claimant in Claim 2 to Carrier (Employes' Exhibit B).

Under date of April 7, 1958, Carrier's Assistant Superintendent Dining Service denied both Claims 1 and 2 (Employes' Exhibit C).

On April 9, 1958, Organization appealed the denials of Claims 1 and 2 of Carrier's Manager Dining Service, the highest officer designated on the property to consider such appeals (Employes' Exhibit D).

On the date of June 6, 1958, the claims on appeal were denied (Employes' Exhibit E).

The facts in the instant claims are simple and not in dispute. With reference to Claim 1, a regularly assigned waiter on Trains 27 and 28, Boston to Chicago and return, booked off at the commencement of the run. Claimant was the first out on the extra board on that date, was available for duty, and Carrier had sufficient time to call claimant for such extra duty if it had not decided to unilaterally blank the regular assignment held by the employe who booked off the run, as noted above.

Award 6442

"If the Carrier has the unlimited right to add workers to its force, then it has the limited corollary right to remove them, subject to those provisions which the Carrier voluntarily assumed by signing the governing agreement."

Award 6098

"The agreement here involved does not require the carrier to employ a specific number of employes or to employ persons to do work which the carrier does not want performed. This, of course, is contingent on it not violating the agreement. It is also true that the carrier can determine the number of employes to be used in the performance of work except as it is limited by agreement."

Award 8327

"It is a fundamental principle that whether to have work done or not is in the Carrier's sole discretion. I know of no decision, apart from those to be discussed, which have held a carrier obligated to have certain work performed. It is only when a carrier decides to have work performed that the rights of employes to perform that work arises."

CONCLUSION

For the reasons hereinbefore cited, Carrier respectfully submits that the claim of the Employes in this docket is without merit and should be denied.

All the facts and arguments herein presented were made known to the Employes during handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: In our opinion, Rule 4(f) (3) of the applicable Agreement requires a sustaining Award. It provides:

"Except as otherwise provided in this agreement, individual vacancies expected to be of 30 days' or less duration shall be given to employes on extra list if they are available and qualified for service on the assignment. When no available extra man is considered by management to be qualified for the assignment, a qualified regular man may be used and an extra man assigned to resulting vacancy. (As revised 8/15/50)"

Here, brief "individual vacancies" did occur when the incumbents of the regularly assigned positions failed to report for work on the respective dates involved.

Everything of record indicates that if the regularly assigned employes had reported for duty these dates, the Carrier would not have "blanked" the work of those positions on said days.

We find and hold that:

1. Actual temporary vacancies occurred.

2. The Claimants were agreement-covered employes on the extra list available and qualified to fill the assignments involved on the dates in question.

3. Rule 4 (f) (3) gave them the right to fill said vacancies.

The rule governing this case does have (as contended) the following qualifying proviso in its first sentence: "Except as otherwise provided in this agreement," however, after carefully studying the entire Agreement, we find nothing therein which would negate the rights of the grievants in this case.

The decision rendered herein is predicated upon the unequivocal provisions of a unique rule (the identical wording thereof not being found in any of the Awards cited by the Parties or in their behalf).

This Award should not be deemed to be in conflict with the multitudinous Awards which uphold the general rule that Carrier has the prerogative of blanking the work of positions.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.

DISSENT TO AWARD NO. 11455,
DOCKET NO. DC-11001

Award 11455 correctly recognizes that multitudinous Awards uphold the general rule that Carrier has the prerogative of blanking positions. It is in error, however, in failing to construe Rule 4 (f) 3 together with other rules of the Agreement which make clear this Carrier's prerogative in this respect

as interpreted by our Award 8087 involving these same parties. For this reason we dissent.

W. H. Castle

P. C .Carter

D. S. Dugan

T. F. Strunck

G. C. White