

Award No. 11521

Docket No. DC-11041

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

**JOINT COUNCIL DINING CAR EMPLOYEES UNION,
LOCAL 370**

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Union Local 370 on the property of New York Central Railroad (Lines East) for and on behalf of Brown Haskins for pay for each days he was furloughed from October 11, 1957, while Carrier assigned work to junior employees in violation of agreement.

EMPLOYES' STATEMENT OF FACTS: On November 12, 1957 Organization filed claim in the instant docket (Employees Exhibit A). That claim set up the fact that on October 11, 1957 claimant filed request for displacement of junior utility man. This was acknowledged on that date by Carrier's Mr. Mooney. The displacement slip is attached hereto as Employees Exhibit B.

On November 15, 1957, Carrier's Superintendent Dining Services denied the claim (Employees Exhibit C). On November 26, 1957 Organization appealed the claim to Carrier's Manager Dining Service, the highest designated officer on the property of the Carrier to consider such appeals (Employees Exhibit D). Carrier's Manager Dining Service denied the claim on February 20, 1958 (Employees Exhibit E).

The facts in the instant docket are that claimant has seniority as utility man dating from March 14, 1946. Employee Merriman had seniority in the class of utility man dating from August 12, 1948. Claimant's regular assignment as utility man was abolished August 5, 1957 when claimant attempted to exercise his displacement rights. Carrier refused to permit claimant, the senior employee, to displace the junior employee.

POSITION OF EMPLOYEES: The current agreement between the parties became effective May 16, 1948. A copy of the agreement is on file with the Board and is incorporated herein by reference as though fully set out. For convenience the rules involved in the instant claim for the interpretation and application by this Board are Rules 5 and 12, and are set out in full as follows:

Award 7868 (Docket DC 7575)

The claim in this Docket was presented by the Joint Council Dining Car Employees, Local 385 against the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, on behalf of buffet attendant I. R. Richardson. The position taken by the Joint Council Dining Car Employees in that case, incidentally, is the reverse of their contention in the instant claim.

The facts in Docket DC 7575 are not complex. Richardson had seniority as attendant from 2/1/48, and as assistant attendant from 2/10/48. One Weber had seniority as attendant dating from 2/21/48 and as assistant attendant from 7/30/47. While Richardson was furloughed account reduction in force, Weber was used to perform service in the classification of attendant. In sustaining the claim in that case the Board ruled:

"It is the opinion of the Board that the seniority rights of the Claimant as protected by Rule 6 were not properly recognized when the Respondent denied him the work in question. The Memorandum of Agreement dated September 11, 1952, or the operation of the Joint Buffet Attendant-Assistant Buffet Attendant Extra Board, as it pertains to extra employees of each classification is not applicable to the facts and circumstances of this particular case."

Conclusion

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

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

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 1, Scope of the Agreement between the parties covers two classes of employees, as follows:

Head Utility Men

Utility Men

The Agreement also provides separate seniority for each such class. Claimant held seniority as Utility Man but no seniority as Head Utility Man. Consequently, Carrier's denial of Claimant's request to displace Head Utility Man Merriman, who held seniority in both classes, was not in violation of the Agreement when Claimant was furloughed in force reductions in October 1957.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and Employee involved in this dispute are respectively Carrier and Employee 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: S. H. Schulty
Secretary

Dated at Chicago, Illinois, this 14th day of June 1963.