Award No. 11751
Docket No. DC-11394

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 370

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Local 370 on the property of the Pennsylvania Railroad Company, for and on behalf of Buffet-Lounge Attendants-in-Charge account of the Carrier arbitrarily transferring Buffet-Lounge-Attendants work to employes not covered by the agreement.

1. We claim pay at the rate of buffet-lounge-attendants-in-charge for B. McAllister, L. P. Beckett, Alex Peters and all other employes similarly situated, adversely affected.

2. We request that race and/or other specials be posted for bid under the agreement and posted for bid in conformity with Rule 2.

3. We request that extra waiters adversely affected each Saturday when a buffet-lounge-attendant is assigned as a waiter while a steward performs the buffet-lounge-attendant-in-charge's work, be compensated retroactively.

4. We request that the vacation rights of employes entitled to this work, and denied same, be adjusted, if adversely affected.

EMPLOYES' STATEMENT OF FACTS: The facts underlying this claim are relatively simple. Carrier posted for bid by stewards assignments as buffet-lounge-attendants-in-charge. On August 6, 1958, Organization filed time claim on behalf of claimants, contending that this work was of a kind covered by the agreement between the Carrier and its dining car employes. (Employes' Exhibit A.)

This claim was handled to conclusion on the property, and, as a result of successive denials by Carrier officials, has been progressed to this Board for adjudication. (Employes' Exhibits C, D, E, F, G, H and J.)

POSITION OF EMPLOYES: The Scope Rule, and the definitions of the terms contained therein, provides in effect that this agreement covers exist-

"Another phase of the case which affects possible jurisdiction by this Division is the matter of the rights of the Brotherhood of Railroad Trainmen. The record nowhere reveals whether the B. of R. T. has been advised of the pendency of this case, or has been given an opportunity to express itself, inasmuch as the restoration of the claimant would affect the seniority rights of other trainmen. . . ."

An award in this case affecting the rights of Buffet Lounge Attendants and Stewards in the Dining Car Department without notice to them or to the Organizations which represent them on the property would not only be essentially unfair and in violation of the Railway Labor Act, but would also constitute a vain and useless act on the part of the Board. Under the authority of many court decisions[1] any award made under such conditions is invalid and unenforceable.

CONCLUSION

The Carrier has shown that neither the Claimant nor a representative properly authorized by him to act in his behalf has complied with the applicable appeal requirements of the Agreement and that your Honorable Board is without any jurisdiction to entertain this claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employe involved.

(Exhibits not reproduced.)

OPINION OF BOARD: The Agreement applicable herein contains certain provisions (Rule 7A-3) dealing with the handling of grievances and establishing a System Board of Adjustment to deal with disputes involving the interpretation or application of the Agreement with the Dining Car and Railroad Food Workers Union.

The Carrier has demonstrated that neither the Claimant nor a representative properly authorized by him to act in his behalf complied with the applicable requirements of the Agreement.

An identical situation was presented to the Board in Award 10360 (Schedler) involving the same parties and the same property. This matter should

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[1] **Nord v. Griffin,** 86 F. 2d 481 (C.C.A. 7th 1936), cert. den. 300 U.S. 673 (1937); **Estes v. Union Terminal Co.,** 89 F. 2d 768 (C.C.A. 5th 1937); **Watson v. Missouri, Kansas-Texas R. Co. of Texas,** 173 S.W. 2d 347 (Texas Civ. Appl. 1943); **Hunter v. Atchison, Topeka and Santa Fe Railway Co.,** 171 F. 2d 594; **Missouri-Kansas-Texas R. Co. et al. v. Brotherhood of Ry. and S.S. Clerks, et al.** 188 F. 2d 302; **Illinois Central R. Co. v. Whitehouse,** 212 F. 2d 22; and **Allain v. Tummon et al.** 212 F. 2d 32; **O.R.T. v. N.O.T. & M.R.R.,** 229 F. 2d 52.

have been submitted to the System Board of Adjustment under the rules of the Agreement and this Board is without jurisdiction to hear this claim.

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 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 this Board is without jurisdiction to handle this dispute.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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