

Award No. 13202
Docket No. DC-14773

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Supplemental

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Time claim filed by B. H. Smith, Steward, alleging that he was "run around" because of the use of Waiter-in-Charge of Train 548 from Harrisburg to Washington on April 10, 1963.

EMPLOYES' STATEMENT OF FACTS: The Claimant, Mr. B. H. Smith, on the date listed in the instant claim was assigned to the Stewards' Extra List which protects the service of the New York Seniority District and any extra service originating on said District requiring a Dining Car Steward's services. On the date indicated in the instant claim a Waiter-in-Charge was assigned to the dining car on Train No. 548 from Harrisburg, Pa. to Washington, D. C. This Dining Car contained forty-eight (48) seats and should have had a Steward-in-Charge of the Dining Car. Appendix "A" of the Schedule of Regulations and Rates of Pay for the Government of Dining Car Stewards reads as follows:

"APPENDIX 'A'

It is agreed, subject to exceptions under paragraphs A, B, and C, that a steward will be assigned to a dining car, when such car is a "standard dining car", and operated for the exclusive purpose of rendering meal service at tables to at least thirty (30) persons simultaneously.

EXCEPTIONS

(A) Except during peak periods not to exceed 15 days, after all available stewards at the home terminal from which the assignment originates have been assigned to service on "standard dining cars".

(B) Except when a "standard dining car" is used in place of a:

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|--------------------------------------|---|
| Cafe Coach Car; | Grill Car; |
| Cafe - Lounge - Parlor Car; | Diner - Club car, fixed or convertible; |
| Parlor - Lounge- Buffet - Coach Car; | Diner - Lounge Car, fixed or convertible; |
| Broiler Coach Car; | Diner - Parlor Car, fixed or convertible; |
| Cafe - Observation Car; | Bar Car, fixed or convertible; |

Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, first, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules and working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that there was no violation of the Rules Agreement in this dispute and that the Employees have failed to present any proof whatever to the contrary.

Therefore, the Carrier respectfully requests that your Honorable Board deny the claim of the Employees in this matter.

(Exhibits not reproduced).

OPINION OF BOARD: On April 10, 1963 the Carrier operated a Dining Car on Train 548 between Harrisburg, Pennsylvania and Washington, D. C. It had built up the seating capacity of this car from 28 to 48 persons and placed it under the responsibility of a Waiter-in-Charge. The Organization filed the instant claim on behalf of B. H. Smith then assigned to the New York Extra List who it alleges should have been assigned to the Dining Car as Steward.

The Organization contends a Dining Car with seats for more than 30 persons required assignment of a Steward; that New York Stewards hold seniority in a district which includes Harrisburg; that Smith, the senior available Steward, should have been assigned that run and deadheaded from his home terminal New York to Harrisburg to work it. It points out that in two similar cases involving a Dining Car originating in Philadelphia, the Carrier paid the claims to the Steward thus denied work and that compensation should also be provided in this case.

The Carrier denies liability on the theory that the Organization has not proven that the built up car was a Standard Dining Car thus requiring a Steward for service; and that even if it be held that this was a Standard Dining Car, the specific language of Appendix A proves that the Carrier was not required to deadhead a Steward from New York to Harrisburg to have him available for such an assignment. Accordingly the Carrier urges that the claim be denied.

The facts in this case are undisputed. B. H. Smith was assigned to the New York Extra List. The Dining Car in dispute originated in Harrisburg, Pennsylvania. Was the Carrier required to bring B. H. Smith from New York to serve as Steward?

Appendix A clearly states that:

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"* * * a steward will be assigned to a dining car, when such car is a 'standard dining car', and operated for the exclusive purpose of rendering meal service at tables to at least thirty (30) persons simultaneously.

* * * * *

"When stewards are not assigned and/or used in accordance with the foregoing, the available stewards not so used will be paid the amount they would have earned had they been used in accordance with the foregoing requirements.

* * * * *

"The term: 'Available stewards' means a steward who is unassigned and available for duty at the terminal from which the assignment originates at the time the assignment is made, * * *"

In the instant case B. H. Smith was unassigned but he was not "available for duty at the terminal from which the assignment originates" namely Harrisburg. There is nothing in the Agreement which requires the carrier to deadhead him to Harrisburg from New York to have him available for duty at the terminal. The Organization states that since the stewards at New York are in the same seniority district as is the Harrisburg terminal they are entitled to work commencing from Harrisburg. This would be true if they were at Harrisburg at the time, but to construe Appendix A to mean that an available steward is one who is unassigned and available "within the seniority district" rather than "at the terminal" would constitute a rewriting of the parties' Agreement which is beyond our authority.

The reliance of the Organization on the Carriers settlement of two similar claims is not controlling in this case inasmuch as the instant relied upon provision was not determinative in those cases.

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 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 Agreement was not violated.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1965.