

Award No. **13511**
Docket No. DC-14839

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 354

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 354 on the property of the Denver & Rio Grande Railroad Company, for and on behalf of **Waiter A. J. Halbert**, that claimant be paid for all time he would have earned from November 24, 1963 through November 30, 1963, **Trains NOS. 17-18**, account of Carrier assigning a junior employe to the trains and on the dates in question. in violation of the Agreement between the parties.

EMPLOYEES' STATEMENT OF FACTS: Claimant is an extra board employe. On or about November 19, 1963, Claimant requested of Carrier's sign-out official, an assignment for known vacancies of two (2) waiters on Train No. 17, beginning November 24, 1964, these vacancies were known to be of more than ten (10) days' duration. On November 23, 1964, Carrier's sign-out official contacted Claimant concerning a less desirable assignment. Claimant stated that he preferred to wait until the following day and make the assignment on Train No. 17 as previously requested. Carrier, however, did not assign Claimant to any of the vacancies on the train in question, but instead, on November 23, 1963, assigned two (2) furloughed employes.

Time claim was filed by the District Chairman on behalf of Claimant. claiming compensation for the time he would have earned had he been allowed to make the assignment. When Carrier under date of December 3, 1963 denied the claim, the General Chairman wrote Carrier on January 20, 1964. (Employees' Exhibits A and B.) Carrier's Superintendent Dining Cars again denied the claim, (Employees' Exhibit C.)

On January 27, 1964, Employees appealed this decision to Carrier's Director of Personnel, the highest officer on the property designated to consider appeals, who, after conference, and on March 23, 1964 declined the appeal. (Employees' Exhibits D, E, and F.)

POSITION OF EMPLOYEES: The controlling rule. in the Agreement between the parties hereto, reads as follows:

OPINION OF BOARD: In this dispute, the letter of the General Chairman dated January 20, 1964 represented the **claim**. The **claim** was denied by letter of January 22, 1964 and no exception **or** notice that the decision was not accepted **was given** within **sixty** days **as** required by Rule 16 (b) of the **Agreement**.

“(b) If 8 disallowed claim or grievance **is** to be appealed, such appeal **must** be in writing and must be taken within **60** days from receipt of notice of **disallowance**, and the representative of the Carrier **shall** be notified in Writing within that time **of** the rejection **of his** decision. **Failing** to comply with this provision, the matter **shall** be considered closed, . . .”

For this **reason**, this Board cannot accept jurisdiction.

FINDINGS: The Third Dividon 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 Employeas within the meaning of the Railway Labor Act, **as** approved **June 21, 1934**;

That this **Division** of the Adjustment Board does not have jurisdiction over the dispute involved herein.

AWARD

Claim **dismissed**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1965.