

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

ILLINOIS CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of Steward J. J. Nolan for all time lost from regular assignment, Trains 5 and 6, beginning March 6, 1962, until permitted to be placed thereon, April 5, 1962.

EMPLOYES' STATEMENT OF FACTS: Dining Car Steward J. J. Nolan was off from work due to illness for approximately two months prior to his attempting to exercise seniority on Trains 5 and 6 on March 6, 1962. Prior to going on leave of absence Mr. Nolan held regular position as Steward on Trains Nos. 53 and 52, the City of Miami, between Chicago and Miami, Florida. Upon recovering his health, Mr. Nolan wrote the Superintendent Dining Service on February 28, 1962, stating that he intended to exercise seniority and work the regular assignment on Trains Nos. 5 and 6, the Panama Limited, between Chicago and New Orleans, on March 6th and thereafter. The Superintendent-Dining Service wrote Mr. Nolan on March 2, 1962, refusing the request to exercise seniority.

The Brotherhood's Local Chairman B. L. Wedding appealed this dispute to the Superintendent in letter dated March 8, 1962, and presented the claims of Mr. Nolan for all time lost beginning March 6, 1962, and all subsequent dates that Nolan was denied the exercise of seniority rights to displace a Steward on Trains Nos. 5 and 6, that was junior to Nolan. Thereafter, the Carrier's Superintendent of Dining Service, W. T. Reed, and General Superintendent of Dining Service, C. J. Bueschel, handled through correspondence and in conference the dispute and claims resulting from the Carrier refusing Nolan the right to exercise seniority. Although the claim for time lost was presented to the Superintendent in letter dated March 8, 1962, along with the request to permit Mr. Nolan to exercise seniority, the claim was never declined to claimant Steward J. J. Nolan. When the claim was not declined by Superintendent Reed, the Brotherhood's Local Chairman appealed the claim in letter dated March 24, 1962, to General Superintendent C. J. Bueschel. Finally, on April 2, 1962, Superintendent W. T. Reed replied to the Local Chairman's March 8, 1962 letter and again refused to permit Steward Nolan to exercise seniority as he had requested. Superintendent Reed declined the claim to the Brotherhood's Local Chairman B. L. Wedding, but the Carrier has never declined the claim to the claimant. Further handling of

March 6 through April 5, 1962 would be invalid. The company demonstrated that the claimant was unavailable for service by virtue of his being AWOL and, accordingly, could not have possibly lost any time, since his unavailability precluded any time for him to lose. In other words, the claimant's own actions placed him beyond the scope of the contract between the company and the employes, and, consequently, he could not and was not deprived of that which was assumed to be his under the contract (viz., an exercise of seniority to trains 5-6).

* * * * *

The company has positively demonstrated that there is no contractual or procedural grounds for this claim. It has proved that the claim is not valid under the time limit rule. It has proved that it is not valid under Article 16. And it has proved that the claimant's unavailability during the claim period precludes validity of the claim under any circumstances. The claim must, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: J. J. Nolan, Steward of Dining Cars on Trains Nos. 52 and 53, the City of Miami, between Chicago and Miami, Florida, took a leave of absence for sixty days, commencing December 30, 1961. On February 28, 1962, he wrote to the Superintendent of Dining Service, stating that he intended to exercise his seniority for a regular position on Trains Nos. 5 and 6, the Panama Limited, between Chicago and New Orleans, beginning March 6, 1962. The Superintendent advised him that it would not be possible for him to exercise his seniority to Trains Nos. 5 and 6 under the provisions of the Steward's Schedule. The Manager of Personnel also telephoned the General Chairman to inform him of the reason why Claimant's request was denied. On March 8, 1962, in a letter to the General Chairman, he confirmed the denial. On the same day, the Local Chairman filed a claim in behalf of Mr. Nolan. The Superintendent declined it in a letter dated April 2, 1962. After conference between representatives of the Brotherhood and the Carrier, Mr. Nolan was permitted to work on Trains Nos. 5 and 6, beginning April 5, 1962.

Mr. Nolan claims compensation beginning March 6, the date he alleges he should have received the position when his leave of absence expired, until April 5, the date he secured the assignment on Trains Nos. 5 and 6. He argues that the claim is automatically payable because he was not given notice of disallowance in accordance with Article 24 (b), the time limit provision in the Steward's Schedule. He also contends that as the senior employe returning from a leave of absence, he is entitled to the assignment on Trains Nos. 5 and 6 for which he applied under Article 16.

In respect to Claimant's contention that he did not receive a notice of declination from the Superintendent of Dining Service, the record establishes that the General Chairman acting as his authorized representative received such notice within the 30 day time limit. We regard this communication to the General Chairman as notification to Mr. Nolan and, hence, we find that the Carrier complied with Article 24 (b).

The question remaining is whether Mr. Nolan was entitled to exercise his seniority to the position under the provisions of Article 16, Sections (b) and (f).

Section (b) states that the method by which a steward who has seniority may secure a new position or permanent vacancy is by making a written request for the assignment when it is bulletined. The only exception to this method is by agreement of the representatives of the parties.

Section (f) permits a steward returning from a leave of absence to exercise his seniority to a bulletined run.

The record discloses that when Claimant on September 5, 1961, made his first application for Trains Nos. 5 and 6 while he was working his regular runs 52 and 53, his request was denied because no bulletined vacancy on these runs had been advertised by Carrier. The representative of Brotherhood then attempted to obtain the position for him through agreement under the exception to the rule, the escape clause in Section (b). Mr. Nolan, however, was again denied the position.

Claimant Nolan regards Section (f) as giving him the right to exercise his seniority to obtain a position on runs 5 and 6, even though the assignment of these runs was not bulletined during his leave of absence. If Claimant's interpretation is accepted, his leave of absence would entitle him to a position which Section (b) would not give him. The term "a bulletined run" in Section (f) refers to positions bulletined during the leave of absence of an employee and does not indiscriminately apply to any bulletined position. This Section extends the same privileges to a steward on leave as to an employee not on leave in applying for a position that is created or a vacancy that occurs during the period of his leave. Moreover, the record is clear that the past practice supports our interpretation of Section (f).

Although Carrier did eventually agree to place Mr. Nolan on Trains Nos. 5 and 6, his claim for compensation for time lost from this assignment is without merit.

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

The Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1965.