

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM:

Time claim filed for Bernard Rhodes, Steward, claiming compensation for the trip on Train No. 3 leaving New York October 18, 1963, when a Waiter-in-Charge was improperly assigned.

EMPLOYES' STATEMENT OF FACTS: On October 18, 1963, the Claimant was assigned to the New York Extra List of Stewards and was rested and available for call when a Waiter-in-Charge was allowed to depart this terminal assigned to a standard dining car which should have been manned by a Steward in accordance with Appendix 'A' to the Agreement effective January 16, 1936, as amended, governing Dining Car Stewards, reading in part:

"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."

Further provisions of Appendix 'A' read:

"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 "Will be paid the amount he would have earned had he been used" means the difference in actual earnings between the amount he would have earned on the assignment to which he was not assigned and the amount earned during the same period of time.

As previously shown, the assignment in question to Train Nos. 4 and 3 originated in St. Louis and the mere fact that trains with two different symbol numbers are involved in no way changes the assignment in question or its point of origin and termination.

Therefore, it is contended by the Carrier that the attempt by the Employees to split this assignment to Train Nos. 4 and 3 on the basis that there are trains with two (2) different symbol numbers involved is without merit and should be totally disregarded by your Honorable Board.

III. Under the Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The 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: A waiter-in-charge was used as steward in the dining car on Train No. 4 which left St. Louis for New York on October 17, 1963. No extra steward was available in St. Louis at the time and no objection is raised by Petitioner to that eastbound service. The same employee then served as steward on the return trip to St. Louis leaving New York on October 18, 1963, this westbound train being designated Train No. 3.

Claimant was available on the extra steward list at New York on October 18, 1963, and Petitioner insists that the use of the waiter-in-charge rather than Claimant breached Appendix A to the applicable Agreement which stipulates that a steward must be used on dining cars of the type in question.

It is uncontroverted that Trains 4 and 3 are considered a couplet which originates and terminates at St. Louis. At the time the couplet assignment in question originated and a steward was needed, there was no extra steward

available in St. Louis. It accordingly would seem unreasonable to require Carrier to deadhead the waiter-in-charge back to St. Louis on the westbound portion of the couplet after he had been used as steward on the eastbound trip through no fault of Carrier and without objection by Petitioner. Item VIII of the Extra Board Agreement expressly recognizes that "When an Extra Steward is used into another seniority district in which he holds no seniority, he may be used to perform any extra service from that seniority district, en route to his own seniority district, without regard to the standing of extra stewards registered on the extra list of the seniority district in which he holds no seniority."

The waiter-in-charge in the present case served as an emergency extra steward without objection by Petitioner and there is no indication anywhere in the Agreement or record that Item VIII should be so strictly construed as to be inapplicable to any employe who serves on a trip as extra steward, albeit on an emergency basis, under the present circumstances.

In the light of this specific factual situation the claim will be denied.

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 the Agreement 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 29th day of July 1965.