

Award No. 13840
Docket No. DC-15112

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF RAILROAD TRAINMEN

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

STATEMENT OF CLAIM: Protest of Dining Car Stewards account assignments of stewards on dining cars on Trains 7 and 8 being discontinued, effective February 25 and 26, 1963, and waiters-in-charge being assigned to perform the duties of stewards, and request that stewards be restored to their assignments.

Also, claims, commencing February 25, 1963, of Stewards H. A. Claus, H. H. Lundquist and G. E. Read, and other stewards filing subsequent claims, for difference in time earned and time lost as result of the discontinuance of these assignments.

Articles 1, 2 and 14, Stewards' Agreement and NRAB, Third Division, Awards 1235, 2433 and 11072.

EMPLOYES' STATEMENT OF FACTS: Pursuant to decision rendered in Third Division Award No. 11072, January 25, 1963, the Carrier restored dining car stewards on Trains 7 and 8 between Denver and Salt Lake City as evidenced by the following quoted bulletin:

**"DINING CAR DEPARTMENT
OFFICE OF SUPERINTENDENT
BULLETIN No. 10**

Burnham, February 4, 1963

Dining Car Stewards:

Bids will be received in this office until 8:00 A. M., February 14th, for three qualified Dining Car Stewards, assigned to work on Trains 7 and 8, under the following schedule:

	Train	On Duty	Off Duty	Time Allowance
1st Day	#7 Denver	2:30 P. M.	Enroute	10:30 P. M. 8'00"
2nd Day	#7-#8 Enroute	5:00 A. M.	Salt Lake	9:15 A. M. 4'15"
2nd Day	#8-#2 Salt Lake	3:30 P. M.	Enroute	10:30 P. M. 7'00"
3rd Day	#8 Enroute	5:00 A. M.	Denver	8:15 A. M. 3'15"
				22'30"
4th Day	Repeat			

service in the abolition, by the Carrier, of four trains and the scheduling of two new trains effective October 2, 1949.

The disappointment of the Employees over the loss of positions subject to the Agreement is quite understandable, but this Board does not have plenary equitable jurisdiction. We have authority only to interpret, apply and enforce the agreed upon rules and once interpreted, we can only apply and enforce them accordingly until changed."

And in this connection, all Dining Car Stewards are presently employed on dining cars on this property.

In Award 7045, (CRI&P v BRT, Dudley E. Whiting):

"It fairly appears that, on the trains involved in the claim as well as other trains, it has been the practice of the Carrier to use stewards or waiters-in-charge on the basis of the volume of business and the number of employees to be supervised. That practice is not a violation of the agreement and appears to have been the determining factor in the action about which this complaint was made."

The Employees' request in this case is wholly without contractual foundation and must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In compliance with the provisions of Section 3. First. (j) of the Railway Labor Act, as amended, notice of the pendency of this dispute was served upon the Joint Council of Dining Car Employees under date of December 21, 1964. That organization declined to participate herein. The record discloses that on October 15, 1964, Petitioner amended the claim by withdrawing that part seeking compensatory damages for certain named claimants. The claim before the Board, then, is a protest against the Carrier's abolishment of dining car stewards' positions, the assignment of waiters-in-charge to perform the duties of the abolished positions, and a request that the affected stewards be restored to their former assignments.

The Board may not properly order a carrier to restore a position for to do so would be an *ultra vires* act. See Awards 9416, 12336, 12802, 13096, 13478. However, the Board's power to exercise jurisdiction over a dispute based upon an alleged violation of an effective agreement between the parties, even where, as here, the relief sought is not expressed in terms of damages, is even more firmly established by statute. Section 3. First. (i) of the Railway Labor Act, as amended, expressly provides, *inter alia*, that "disputes . . . growing . . . out of the interpretation or application of agreements . . ." shall be an appropriate subject matter of the Board's jurisdiction. Here the Petitioner alleges violation of cited provisions of its agreement with the carrier as a result of the latter's unilateral act of abolishing certain positions. Petitioner's appeal to the Board is for a determination of its contractual rights under that agreement. That we may, and, as a matter of law, must take jurisdiction in order to resolve that kind of issue cannot successfully be disputed. We are bound so to do by statute.

Accordingly, the Board will not order restoration of the abolished stewards' positions, but will consider and resolve the question of whether the effective

Agreement here was violated when the Carrier unilaterally abolished those positions and transferred the work thereof to employees of another craft or class; i.e. waiters-in-charge.

That issue already has been considered and disposed of by this Board. In Award 11072 we sustained the position of the petitioning Employees by holding that the Agreement was violated and claimant Stewards were entitled to compensatory damages under similar factual circumstances involving these same parties and the identical agreement. These findings were cited, upheld and followed in our Award 12226, again sustaining the position of the Employees.

Despite these controlling Awards, this Carrier again sought to avoid compliance therewith by making certain changes in the service and designation of the lounge-diner cars operated on its Trains 7 and 8. The net effect of these changes was to reduce the quality and quantity of the meals and services made available to the public traveling on these trains. The record clearly shows, however, that the changes made, including the designation of the cars as "cafe cars" did not, in fact, reduce the operational requirements to the point where the services of a steward were no longer required. Put another way, Stewards' work remained to be performed; the abolishment of the steward positions and the transfer of the work thereof to employees of another craft or class was a violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 was violated.

AWARD

The protest is sustained.

The request that "Stewards be restored to their assignments" is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1965.