Award No. 14012
Docket No. DC-15435

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 849

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 849, on the property of the Chicago, Rock Island and Pacific Railroad Company, for and on behalf of Waiter Charles Worthy, that he be compensated for the time he would have accumulated on Trains 7-10, November 23rd and 24th, 1964, his regular assignment, account of Carrier not allowing claimant to make his assignment on the above dates, in violation of the Agreement between the parties.

EMPLOYES' STATEMENT OF FACTS: Under date of November 24, 1964, filed the following claim:

"November 24, 1964

Mr. M. H. Bonesteel, General Superintendent
Dining and Sleeping Cars
Chicago, Rock Island and Pacific Railroad Company
139 West Van Buren Street
Chicago, Illinois 60609

Dear Sir:

Accept this as a time and money claim in behalf of Waiter Charles Worthy, who was assigned to Train No. 7 and 10, September 22, 1964. As of that date, this became a regular guaranteed assignment for Mr. Worthy as Pantryman.

This assignment begins at Chicago as Train No. 7 and terminates for the above named employe at Des Moines, Iowa and he returns on Train No. 10 the following day, to complete a trip from Chicago to Des Moines.

Mr. Worthy reported for work on or ahead of time November 23, 1964 at the Commissary on 51st Street in Chicago, Illinois. He was advised by the Sign-Out Man that he could not go out on his regular assignment because he had been off one (1) trip. This is in violation of Mr. Worthy's rights, due to the fact that a Junior Employe was assigned to Mr. Worthy's regular assigned job.

Although not covered by any agreement, in line with long past practice when claimant laid off in the middle of his cycle or at the start of his cycle, an extra board employe was used to complete his cycle.

Carrier's contention is, as the board has held many times, that an established practice at length constitutes an agreed to application of the rules by the parties. It has long been a practice also that dining car employes when exercising their seniority are not allowed to bump in the middle of a cycle, but must start on the first trip of a new cycle.

Claimant's cycle on Trains 7–10, covering three days, is no different than a three-day trip on Carrier's Trains 7–8, Chicago–Denver–Chicago.

The employes themselves desire this arrangement so that an extra board employe will not miss out on a more lucrative assignment by being called for only one short trip.

The Organization contends Carrier's action violated the Seniority Rule, but have made no showing in this respect. This claim must fail for lack of support from the Agreement or facts.

Your Board is requested to deny this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: In the exchange of correspondence between the parties relative to the Claim, Carrier said in a letter dated December 14, 1964:

> "Mr. Worthy holds a regular assignment as Pantryman, Trains 7–10, Chicago to Des Moines and return, departing Chicago each second day of cycle of assignment and returning Des Moines to Chicago on the following day. Each trip, Chicago to Des Moines, Mr. Worthy works 18 hours and 20 minutes, and, therefore, must make 11 such trips each month. Inasmuch as Mr. Worthy and his crew depart Chicago each second day, another crew must be assigned to this pool who will depart Chicago, Train No. 7, on the opposite days to Mr. Worthy. The assignments for these crews are set up for them to make a given number of trips, Chicago to Des Moines and return, then go onto their relief for a given number of trips. This would be called 'cycle of assignments between reliefs'." (Emphasis ours.)

The following facts are undisputed:

Claimant, assigned as Pantryman on Train 7–10, was given the following cycles for the month of November, 1964:

Cycle — Nov. 5 — Chicago to Des Moines — Nov. 6 — Return to Chicago
Nov. 7 — Chicago to Des Moines — Nov. 8 — Return to Chicago
Nov. 9 — Chicago to Des Moines — Nov. 10 — Return to Chicago
Nov. 13 — Chicago to Des Moines — Nov. 14 — Return to Chicago
Nov. 15 — Chicago to Des Moines — Nov. 16 — Return to Chicago

Nov. 19 — Chicago to Des Moines — Nov. 20 — Return to Chicago

Nov. 21 — Chicago to Des Moines — Nov. 22 — Return to Chicago

Nov. 23 — Chicago to Des Moines — Nov. 24 — Return to Chicago

Nov. 27 — Chicago to Des Moines — Nov. 28 — Return to Chicago

Nov. 29 — Chicago to Des Moines — Nov. 30 — Return to Chicago

Claimant went out on his assignment November 19th, but laid off the November 21 trip.

Carrier assigned an extra board employe to fill Claimant's assignment on November 21, and the remainder of his cycle.

The Organization filed claim in behalf of Claimant, Charles Worthy, stating that he should have been used on the final trip of his cycle.

Claimant timely reported to fill his position on the November 23-24 trips. He was advised by the sign-out man that since he had laid off on the November 21-22 trip he could not return to his position until the beginning of the next cycle, November 27.

Carrier contends: (1) it has long been the practice that regularly assigned dining car employes who miss a trip in a cycle are not permitted to return to their assignment for the balance of the cycle; and (2) since the Agreement contains no prohibition to such a practice, its employment is not subject to attack by the Organization.

The Organization denies the practice as alleged by Carrier. Inasmuch as neither party has adduced evidence to prove their bare conclusionary statements as to the practice issue, we are unable to resolve the conflict. The burden of proving the practice was Carrier's. It failed.

It is true that the Agreement does not contain an express prohibition of employment of such a practice. And, it is also true that the Agreement contains no provision which qualifies an employe's ownership of a regularly assigned position to the extent of such a practice.

We note Carrier's admission that Claimant "holds a regular assignment." From this we reason that the employe's ownership of the assignment is absolute unless qualified in the Agreement. Finding no applicable qualification in the Agreement, we hold that Carrier violated the Agreement when it denied Claimant the right to work on his regular assignment on November 23-24. We will sustain the Claim.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1965.