

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Nathan Engelstein, Referee

PARTIES TO DISPUTE:**JOINT COUNCIL OF DINING CAR EMPLOYEES' UNION
(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, Henry C. Parks, that Carrier be ordered to re-assign claimant to his original crew on trains 3 and 4 and that Claimant be compensated for all time lost or the difference between what he was paid and his monthly guarantee for the month of February, 1965, account of Carrier allowing Claimant to be displaced by Waiter James Overby on February 17, 1965 in violation of the Agreement between the parties.

EMPLOYEES' STATEMENT OF FACTS: Employees, under date of March 18, 1965, filed time claim on behalf of Claimant account of Carrier allowing one James Overby to displace Claimant on trains 3-4, (employees' exhibit A) alleging that this action by Carrier constituted a violation of Rule 19 of the Agreement. Rule 19 provides as follows:

"RULE 19. EXERCISING SENIORITY

When regular assignments are distributed for any reason, the employe so displaced will exercise his seniority over the junior employe assigned in the pool in which the displaced employe desires to exercise his seniority. The employe so exercising his seniority will have choice of preferred sides, 2-night sides, holidays, layover periods, Sunday sides, etc. In executing this rule the Carrier and the Organization will cooperate in all cases to make every effort to see that the employe that is exercising his seniority does not lose time and will afford him an opportunity to make his guarantee."

"FOR EXAMPLE: If the displaced employe cannot immediately displace the junior employe in the pool desired (by virtue of the junior employe being out on the road) and if his guarantee cannot be protected by performing extra work until he could displace the junior employe, he will then be permitted to displace any junior employe in the pool desired."

Carrier in letter dated March 25, 1965 declined the claim. (Employees' Exhibit B) Carrier in this correspondence admitted that claimant was not the junior employe assigned to the Train 3-4 pool. Carrier, however, attempted to justify its actions on a need to adjust the crews account of alleged inability (for physical reasons) of Mr. Overby and another waiter to handle linen. Employees appealed this decision to Carrier's Vice-President, Labor Relations, on April 5, 1965, the highest officer on the property designated to consider appeals, who, under date of May 19, 1965, also declined the claim. (Employees' Exhibit C and D.)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS:

1. There is an Agreement in effect between the parties to this dispute bearing an effective date of April 1, 1962, reprinted to July 16, 1962, on file with your Board which by this reference is made a part of this submission.
2. The handling given this dispute on the property is shown by the following Carrier Exhibits:
 - A — Employees' letter of February 18, 1965.
 - B — Carrier's letter of March 23, 1965.
 - C — Employees' March 18, 1965, letter of claim.
 - D — Carrier's March 25, 1965, letter of denial.
 - E — Employees' April 5, 1965, letter of appeal.
 - F — Carrier's May 19, 1965, letter of declination.

(Exhibits not reproduced.)

OPINION OF BOARD: Waiter James Overby who had been on leave of absence returned to service and was granted his request to exercise his seniority under Rule 19 of the Agreement. He displaced A. L. Adams, the junior assigned waiter in the pool employed in the operation of the regular dining car on Trains 3 and 4 between Chicago and Los Angeles. After working on this assignment, Mr. Overby advised Carrier that his physical condition would not permit him to perform the heavy lifting in connection with handling the linen which was part of his duties. He was permitted to displace Waiter No. 2, Henry C. Parks, a member of another crew on Train No. 3 and 4.

The Brotherhood on behalf of Mr. Parks contends that Carrier violated Rule 19 when it permitted Mr. Overby to displace him since Mr. Parks was not the junior employe assigned to Train 3 and 4 pool.

Carrier argues that it was justified in the reassignment because of the physical condition of Mr. Overby which was confirmed in a doctor's statement. It states that it did not ask Mr. Overby to exchange duties with the other waiter on his crew, the usual practice, since that employe had recently undergone a serious operation and the medical department had advised that the heavy work of handling of linen might jeopardize his health. Carrier decided that it was in the best interest of the entire crew to assign Mr. Overby to Mr. Parks' position.

Since Mr. Overby, after his return from his leave of absence, had exercised his seniority and had replaced the junior employe in the pool, Mr. Adams, his rights were protected under Rule 19 which governs displacements. He was not entitled under this rule to exercise his seniority again and violate the rights of Mr. Parks who was not the junior employe in the pool. Although we recognize Carrier's effort to make special arrangements to accommodate the needs of an employe for medical reasons, its action must be consistent with the rights of the employe who is displaced and the rules of the Agreement.

We hold the Agreement was violated and the claim on behalf of Mr. Parks is sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1966.



Serial No. 223

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

INTERPRETATION NO. 1 TO AWARD NO. 14691

DOCKET NO. DC-15768

Name of Organization:

**JOINT COUNCIL DINING CAR EMPLOYEES' UNION,
LOCAL 849**

Name of Carrier:

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

Upon application of the representative of the employe involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The basis for the request for interpretation arises from a disagreement concerning payment of compensation. After the sustaining decision was rendered, Carrier refused payment on the grounds that Mr. Parks signed a resignation release of all rights as an employe of Carrier, dated September 7, 1965. Brotherhood asks that the compensation be awarded for the time prior to Mr. Parks' resignation.

At the time the decision was rendered, the compensation was awarded in accordance with the facts before the Board. The resignation document was not part of the original record. The Board cannot dispose of this new issue by means of an interpretation.

Referee Nathan Engelstein, who sat with the Division, as a neutral member, when Award No. 14691 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of November 1967.

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