Award Number 17851
Docket Number DC-18115

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 370

PENN CENTRAL (THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 370 on the property of the New York, New Haven and Hartford Railroad Company, for and on behalf of Commuter Bar Attendant Ben T. Landy and all other commuter Bar attendants similarly situated, that they be paid for eight (8) hours for each day the commuter bar attendant assigned to Train No. 254 is required to perform station duty on Train 372.

EMPLOYES' STATEMENT OF FACTS: Under date of February 16, 1968, Organization's Local Chairman sent to carrier the following letter of protest:

"Mr. W. A. Duprey
Mgr. Dining & Parlor Cars
New Haven Railroad,
South Boston, Mass.

Dear Mr. Duprey,

In our conference in your office February 6th, 1968, when we went over the General bids and we came to the Commuter Bar jobs you intimated that you were going to put Trains 372-254 up as one job.

We wish to inform you that to do this will be over our objections and in violation of the Commuter Bar Agreement of May 15th 1964.

We wrote to you on this matter on October 6th 1967 and at that time we requested that you inform the organization as to what part of the Commuter Bar Agreement or understanding if you had one, that gave the Carrier the right to change that Agreement and the working conditions of the Commuter Bar Attendants. This you have failed to do to this date and are still in violation of this agreement.

Furthermore we feel you are also in violation of Sect. #7 of the Railway Labor Act.

Agreement, effective October 1, 1953, between the New York, New Haven and Hartford Railroad and employes represented by Dining Car Employees Union, Local 370, is on file with this Board and is by reference made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: This claim involves the question as to whether or not the Agreement was violated when Carrier assigned a Commuter Bar Attendant to work Trains No. 254 and 372 and whether or not the work performed by said attendant for Train No. 372 amounted to "station duty" work.

Carrier has raised a procedural defect in this dispute alleging that the claims of the employes involved herein are barred under the provisions of Rule 18 of the Agreement.

The pertinent provisions of Rule 18 are:

> "Should an employe have any grievance with rsspect to any matter covered by this Agreement, other than discipline, the employe affected or duly accredited representative on his behalf may within thirty (30) days present the case in writing to the employe's immediate superior. Claims not so presented will be barred.
>
> Appeals from decisions of one Carrier officer to another must be made in writing to the Carrier officer to whom appeal is being made within thirty (30) days from the date of the decision of the previous Carrier officer from which appeal is being taken.
>
> Appeal from decision of highest designated officer of the Carrier to whom appeals may be made must be made to the appropriate division of the National Railroad Adjustment Board within six (6) months from the date of the decision of such highest designated officer or otherwise be barred from further appeal through any channel."

Carrier points out that due to light bar sales on Train No. 372, the position of Commuter Bar Attendant on said train was abolished effective September 5, 1967 and the work of the Commuter Bar Attendant on Train No. 254 was rearranged so that he was required to sell beverages on Train No. 372 which said train was standing in Grand Central Station until his own assigned Train No. 254 departed for Stamford, Connecticut; that Employe Kearns then displaced to position of Commuter Bar Attendant on Train No. 360 on September 5, 1967 giving rise to a claim filed on October 6, 1967 on behalf of Employe I Brewington for being illegally displaced by Employe Kearns and for any and all bar attendants affected by the violation of their Agreement because of the combining of the Commuter Bar Attendants' positions on the two trains; that on October 27, 1967 Carrier's Manager of Dining & Parlor cars, W. A. Duprey, denied said claims on the basis that said claim had not been timely presented in accordance with the applicable rules and were therefore barred; that no appeal was taken from Mr. Duprey's decision of October 27, 1967. By letter, dated March 20, 1968, the Organization through its General Chairman, Dudley Washington, filed claim with Carrier for Claimant Landy and "all other Commuter Bar Attendants similarly situated", alleging that without conferences, negotiation or reposting for bid, Carrier abolished Car Attendant on Train No. 372 and combined the work on Trains No. 372 and 254.

The Organization contends that Rule 18 gives an employe the right to present a claim "with respect to any matter" covered by the Agreement within thirty (30) days after the employe is affected; that therefore since Claimants herein were not affected until March 3, 1968, then Carrier's contention that the earlier claim on behalf of Bar Attendant Brewington is identical to this claim is without merit; that the Agreement does not bar the filing of a later claim concerning the same subject matter where the prior claim was not appealed to the Carrier's highest officer; that a claim is only barred if not appealed within six (6) months from the date of Carrier's highest officer's decision.

It is clearly seen that the Organization did not pursue the original claim that was filed in regard to the alleged violations of the Agreement by Carrier when it combined the work of the Commuter Bar Attendants on said Trains No. 254 and 372.

Further, the claim presently before this Board is identical to the claim filed on October 6, 1967, the only difference between this claim and the claim of October 6, 1967 being the claim date and different named claimants. In effect, this claim is a re-filing or re-submission of the original claim filed on October 6, 1967. In Award No. 12851 it was stated: "The Board has ruled that claims once barred under a time limit rule cannot be resubmitted for adjudication."

Inasmuch as violation of the Agreement, if any, occurred on September 6, 1967, the date of the Commuter Bar Attendants' positions were combined on the two trains in question, then the instant claim is barred because of failure to file said claim within the time limits as prescribed by Rule 18 of the Agreement.

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 Railroad Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1970.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.