Award No. 18964
Docket No. DC-19216

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES — LOCAL 456

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employes Local 456 on the property of the Southern Pacific Company, for and on behalf of EMIL STRONG and JAMES BUTTS, Chef Cooks; HAROLD WAGGENER, et al., Waiters, and all others similarly situated, for the number of compensated hours they should have earned at their respective rates of pay on or about April 18th and 19th, 1970, on the so-called "Railroad Society Club Special Trains" to Bakersfield, California, and return, in violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: On or about April 18 and 19, 1970 the Southern Pacific Company, hereinafter the Carrier, operated the so-called "Railroad Society Club Special Trains" to Bakersfield, California, and return. During the trips food was served the occupants of the train. Under date of April 30, 1970 the General Chairman of the Organization submitted the claim. Under date of May 14, 1970 the Carrier's Commissary Agent declined the claim based upon the fact and the only fact that the food service was in private cars. The claim was appealed to the Carrier's Manager of the Dining Car Department under date of June 8, 1970. Conference was held on July 20, 1970 and Carrier's Manager reaffirmed the denial letter of May 14, 1970 on July 21, 1970. Under date of October 14, 1970 the claim was appealed to the Carrier's Assistant, Mr. Jensen, Manager of Labor Relations. Under date of October 28, 1970 confirming a conference held on October 26, 1970 Carrier reaffirmed their one position that the food was served in private cars. This letter was amended under date of October 30, 1970 adding to Carrier's position a new defense that:

> "If claim were otherwise valid, which we deny, there would be no proper basis for claim for other than those employes whose services actually would have been required to provide the service involved on dates in question."

Carrier was advised under date of November 12, 1970 that the decision was unacceptable to the Organization and was being appealed to your Honorable Board. The above correspondence is reproduced for your Board as Exhibits JC-1, JC-2, JC-3, JC-4, JC-5, JC-6, J-C7, and JC-8.

(Exhibits not reproduced)

during their train tour on those dates. The named claimants were available for service at Los Angeles on April 18 and 19, 1970, and none of those named claimants performed service on those dates.

By letter dated May 14, 1970 (Carrier's Exhibit "B"), Carrier's Commissary Agent denied the claim. By letter dated June 8, 1970 (Carrier's Exhibit "C"), Petitioner's General Chairman appealed the claim to Carrier's Manager, Commissary Operations and by letter dated July 21, 1970 (Carrier's Exhibit "D"), the latter denied the claim. By letter dated August 7, 1970 (Carrier's Exhibit "E"), Petitioner's General Chairman advised that denial of the claim was not acceptable.

By letter dated October 14, 1970 (Carrier's Exhibit "F"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Labor Relations and by letter dated October 30, 1970 (Carrier's Exhibit "G"), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier operated special trains from Los Angeles to Bakersfield, California and return on April 18 and April 19, 1970 for the sole use of the "Pacific Railroad Society," a private organization. The Organization contends that Carrier violated the Agreement when it permitted *a catering company to prepare and serve food in a converted cafeteria style* dining car on said special train on said dates.

Carrier contends that the claim is procedurally defective and should be dismissed because of the Organization's failure to have cited a specific rule violation during the handling on the property.

With this contention of Carrier, we agree. We find that the Organization, during the handling on the property, did not assert that a specific rule of the Agreement had been violated by Carrier, but made the general assertion that Carrier, by permitting a catering company to prepare and serve food in a converted cafeteria style dining car on the special trains, denied work to the Organization's employes in violation of the current Agreement. Nowhere did the Organization cite a specific rule violation during the handling on the property, and it was not until the Organization made its ex parte submission to this Board before it cited "Item II — DEFINITIONS, subparagraph (a) as being violated by Carrier in this instance.

This Board, in a long continuous line of Awards, has repeatedly held that it is too late to supply the specifics for the first time in the submission to this Board because (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Railway Labor Act that issues in a dispute before this Board shall have been framed by the parties in conference on the property. See Award Nos. 13741, 15835 among others.

The Organization's failure to meet its burden of specifying on the property the rule which it alleges was violated — in effect a bill of particulars (See Award No. 14772), requires that this claim be dismissed.

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 claim be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1972.

DISSENT TO AWARD 18964
DOCKET DC-19216

This award is incorrect in dismissing the claim because of no agreement rule being cited on the property.

When a claim is processed through the channels on a property regarding the performance of work, it should be obvious to all that the scope rule is involved. This is especially true when the record reveals that correspondence from the Carrier states:

"* * * is not work reserved to employes covered by the current agreement * * *"

The claim involved food service on a special train and the agreement lists service:

"* * * and cars in special trains."

For this and other reasons this dissent is registered.

George P. Kasamis
G. P. Kasamis
Labor Member

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