

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD TRAINMEN
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

STATEMENT OF CLAIM: "Ex parte submission of the Brotherhood of Railroad Trainmen in claim of Steward A. M. Dedeaux for difference in earnings to date account not assigned to Trains Nos. 70-75-2 and 1 in accordance with bid placed for such run under bulletin No. 94, dated April 9, 1938."

EMPLOYES' STATEMENT OF FACTS: "Bulletin No. 94 dated April 9, 1938, called for bids to fill existing vacancy on Trains Nos. 70-75-2 and 1 between San Francisco and Watsonville Junction. Steward Dedeaux was the senior applicant for the vacancy but was refused assignment by the Commissary Superintendent on the premise that he had designated Train No. 75 as a 'preferred run' under Rule 8 Section (b) of the current Agreement. However, at different times Steward Dedeaux had been used as relief man on the set of trains above constituting the run advertised in Bulletin No. 94.

"Appeal was taken as provided for in Rule 20 of the current Agreement which was unsuccessful, and the claim for difference in earnings subsequently was declined."

POSITION OF EMPLOYES: "The case arises under Rule 7, Section (a) of Agreement covering pay and regulations for Dining Car Stewards, reading:

'Bulletins—New Positions—Vacancies

Rule 7.

(a) New positions and vacancies, known to be of a duration of more than thirty (30) days shall be bulletined for period of ten (10) days (bulletin to expire at noon of tenth day) and, subject to provisions of Rule 8, the senior Steward making application will be assigned.'

and Rule 8 Section (b), reading:

'Seniority—Assignments

Rule 8.

(b) Assignments to preferred runs shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall govern, the designated officer of the Company to be the judge as to fitness and ability subject to appeal as provided for in Rule 20. A steward acquiring positions in the exercise of his seniority, will do so without extra expense to the Company.'

"The Committee maintains no logical excuse can be advanced for depriving Steward Dedeaux of regular assignment to run he heretofore had been

service on a preferred run such as on Train No. 75, 'Lark,' in support of which the carrier respectfully directs the attention of the Board to Carrier's Exhibit A wherein during investigation with Steward Dedeaux he was confronted with 16 complaints (all of which had been taken up with him at time of occurrence), classified as follows:

	Number of Complaints
Excessive cost of operation of diner	2
Failure to report for duty	1
Failure to wear regulation attire	1
Failure to carry out instructions with respect to serving meals to special parties	2
Discourtesy toward patrons	4
Failure to properly supervise dining cars	6
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CONCLUSION

"1. The Carrier requests the Board to deny the request of the Petitioner on the grounds that Steward Dedeaux did not have the qualifications to handle the assignment without impairment of service rendered to the public.

"2. All data herein submitted has been presented to the duly authorized representatives of the employes.

"3. The Carrier requests the privilege of oral hearing."

There is in existence an agreement between the parties bearing effective date of July 1, 1936.

OPINION OF BOARD: The record discloses that Steward A. M. Dedeaux had been occasionally used as an Extra Steward on overflow diners operated in Train 75, the 'Lark,' but he had not been used as the assigned or relief Steward in charge of the regular diner on that run.

Rule 8 (b) of the Agreement contemplates that the Carrier will designate a run and/or runs included within an assignment, held to be preferred runs.

The record does not disclose whether Train 75, the 'Lark,' was so designated by the bulletin advertising the assignment in the instant case, nor does the record show that Train 75 had been previously so advertised and bulletined for dining car steward assignments, or otherwise published to stewards generally as a preferred run.

The claim should be denied in event it is found that Train 75, the 'Lark,' has been designated as a preferred run in any one of the three ways set forth herein, otherwise the claim should be allowed.

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 employe involved in this dispute are respectively carrier and employe 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 case should be remanded to the parties to develop (1) whether Train 75, the 'Lark,' was designated as a preferred run in the advertised bulletin in this case or (2) had been so designated in previous bulletins covering assignments including this run or (3) had been otherwise published

to Stewards as a preferred run since the effective date, July 1st, 1936, of the current Agreement and prior to Bulletin No. 94 of April 9, 1938;

That the claim should be denied in event it is found that Train 75, the 'Lark,' has been designated as a preferred run in any one of the three ways set forth herein, otherwise the claim should be allowed.

AWARD

Case is remanded for disposition in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1940.