

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim Dining Car Steward A. B. Maxwell, Southern Railway, Lines West, for pay at dining car stewards rate for the difference in hours actually worked and the 240 hours provided in dining car stewards agreement, beginning July 1, 1939, account dining car on trains Nos. 17 and 18 being placed in charge of negro waiters between Chattanooga, Tenn., and Birmingham, Ala., contrary to and in violation of schedule rules."

EMPLOYES' STATEMENT OF FACTS: "On February 1, 1936, the Dining Car Stewards Agreement, between that organization and Southern Railway Company effective June 1, 1927, was taken over by the Brotherhood of Railroad Trainmen, the only change being in the caption which was changed to read, 'Dining Car Stewards as Represented by the Brotherhood of Railroad Trainmen,' this change in caption being concurred in by the Carrier.

"At the time this agreement was taken over by the Brotherhood with authority to represent the dining car stewards, passenger trains Nos. 17 and 18 were operated between Washington, D. C., and Chattanooga, Tennessee; train No. 17 leaving Washington at about 4:55 P. M. daily, arriving Chattanooga the following day around 8:00 A. M.; train No. 18 leaving Chattanooga daily around 6:00 P. M., arriving Washington the following day around 11:30 A. M.

"Train No. 17 south picked up at Knoxville, Tennessee, each morning a dining car for the purpose of serving breakfast between that point and Chattanooga, the distance being 111 miles. A dining car steward was assigned to and in charge of this dining car which was handled Knoxville to Chattanooga in train No. 17 where the dining car and steward remained until departure of train No. 18, on which dining car handled on return trip to Knoxville, in the late afternoon serving dinner to patrons between those points.

"Sometime during the fall of 1936, or early in 1937, trains Nos. 17 and 18 were extended Chattanooga to Birmingham, the distance being approximately 144 miles, giving through service Washington to Birmingham. After this extension of the run effected, the dining car was extended to Attalla, Alabama, a point approximately 87 miles south of Chattanooga, the dining car steward going with the car from Knoxville to Attalla where he remained with car until picked up in train on return trip in the afternoon, No. 18 leaving Birmingham at 3:00 P. M.

"At a later date this dining car service was extended to Birmingham, Alabama, train No. 17 arriving there about 11:40 A. M. and train No. 18

'Your joint letter of January 24th addressed to John F. Scott, General Chairman and the undersigned transferring the representation of Dining Car Stewards to the Brotherhood of Railroad Trainmen effective February 1st with the outline of procedure of handling grievance matters is accepted by our Committee and will be governed accordingly in all matters.'

"It will be noted that one of the stipulations contained in Mr. Mackay's letter of January 24, 1936, was that with the exception of the change in representation 'the contract is to remain in effect as at present in accordance with its terms,' and that this stipulation was accepted by the General Chairman. In other words, the agreement with the Dining Car Stewards was transferred to the Brotherhood of Railroad Trainmen without change, and this transfer carried with it the interpretations previously placed upon the agreement through understanding and practice.

"The Carrier respectfully insists that the agreement as interpreted over a long period of time prior to its transfer to the Brotherhood of Railroad Trainmen on February 1, 1936, did not require the use of Stewards on all dining cars and that it can not now require their use.

"On basis of the facts in the case, the claim should be dismissed and the complaint and request should be denied, and the Carrier requests that the Board so decide."

OPINION OF BOARD: This case, to some extent, is a companion case to Docket No. DC-1325, and was presented by the Carrier on the same submission as used in Docket DC-1325. The dispute here involved relates to a claim of Dining Car Steward Maxwell who was deprived of work as a steward by a waiter-in-charge being given work on a portion of the run of trains Nos. 17 and 18. However, in this case there is an additional feature raised by the Carrier which concerns the procedure in presenting this claim and which was not involved in DC-1325. The Carrier in its Position on this dispute states:

"Dealing first with the alleged claim of Dining Car Steward A. B. Maxwell, which General Chairman Roberts seeks to have given consideration by the Board, the Carrier asserts that no such claim as that described by Mr. Roberts has ever been filed and given handling with its officers in the manner provided in the agreement covered by Assistant Vice-President Mackay's letter of January 24, 1936, to former General Chairman Deakins and the latter's reply of January 28, 1936, that no such claim has been 'handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes' as required by paragraph (i) of Section 3, First, of the Railway Labor Act, and, therefore, that to the extent of this alleged claim, the case does not constitute a 'dispute' within the meaning of that term as used in the said paragraph (i) which the National Railroad Adjustment Board is authorized by the Act to hear and decide."

From the facts it appears that on January 24, 1936, the General Chairman of the Brotherhood of Railroad Trainmen was advised as follows:

"In response to your inquiry as to how matters of mutual interest should be handled, I advise you that in cases of grievance or matters involving claims, if the man is dissatisfied with the decision given him by the Supt. Dining Cars and desires to turn the claim over to a brotherhood officer for handling, such matter should then be handled by the General Chairman, or his representative, with the proper Superintendent Dining Cars, i. e., J. D. Crow, Charlotte, North Carolina, or E. L. Kopp, Chattanooga, Tennessee, as the case may be. Failing of adjustment, the brotherhood officer handling the case should appeal to Mr. W. F. Kusch, Manager Dining Cars, Washington, D. C., and if further appeal be desired the matter should be handled with

Mr. F. A. Coile, Personnel Officer, Washington, D. C., whose decision, so far as this Company is concerned, will be final."

In response to this letter General Chairman Deakins replied—

"Mr. C. D. Mackay,
Assistant Vice President,
Southern Railway System,
Washington, D. C.

Dear Sir:

This will acknowledge receipt of your letter of January 24th 1936 relative to our joint letter of January 13th and exchange correspondence on the transfer of jurisdiction of Dining Car Stewards, Southern Railway Company to the Brotherhood of Railroad Trainmen.

Your joint letter of January 24th addressed to John F. Scott, General Chairman and the undersigned transferring the representation of Dining Car Stewards to the Brotherhood of Railroad Trainmen effective February 1st with the outline of procedure of handling grievance matters is accepted by our Committee and will be governed accordingly in all matters.

Yours very truly,

Signed—L. R. Deakins
General Chairman
Southern Railway
Lines West"

CC: A. F. Whitney
John F. Scott
J. T. Weese

It appears quite definitely from this record that the procedure as thus outlined and agreed to was not complied with in so far as the claim of Maxwell is concerned.

Under Section 3 (i) of the Railway Labor Act as amended, the Rules of Procedure of this Board and the prior decisions of this Board, the claim is not subject to the Board's consideration, it not having been "handled in the usual manner up to and including the chief operating officer designated to handle such disputes."

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 claim is dismissed without prejudice to the prosecution of a proper claim through the proper channels.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1940.