

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Dining Car Steward M. M. Bradford for the rate of pay applying to dining car stewards with over six years of service from date called back to service in February 1937 to date again furloughed April 15, 1938.

EMPLOYEES' STATEMENT OF FACTS: Claimant in this case entered the service of the respondent carrier April 16, 1930, and on April 16, 1936, had accumulated six years of service. Sometime prior to February, 1937, the claimant had been furloughed account reduction in force, however, in February, 1937 he was recalled to service and worked until April 15, 1938 as a dining car steward. He was allowed during the period involved the rates of pay as applying to dining car stewards with four years service, as shown in rule herein after quoted, on basis that the time out of service due to being furloughed was not cumulative under schedule rule.

This case was pending at the same time the case of Dining Car Steward L. E. Turner, covered by your division's Docket Number DC-693 upon which Award 697 was rendered July 25, 1938, was pending, and upon receipt of your division's Award 697 the committee endeavored to prevail upon the management to dispose of this case on basis of such award which request was denied.

POSITION OF EMPLOYEES: Rule 12 of the agreement between the respondent carrier and its dining car stewards represented by the Brotherhood of Railroad Trainmen reads:

"RATES OF PAY (Old rates)

	Per Month	Per Hour
Stewards (1st year)	\$140.00	.58½
" (2nd year)	150.00	.62½
" (3rd year)	155.00	.64¾
" (4th year)	160.00	.66¾
" (5th year)	165.00	.68¾
" (6th year)	170.00	.71
" (Over 6 years)	175.00	.73 "

Rule 8, same agreement, reads:

"In reducing forces, ability, fitness and merit being sufficient seniority will govern. Superintendent of Dining Cars to be the judge as to employee's ability, fitness and merit. An employee whose services

In our case, Award 697, the Board makes it plain in its Opinion that there is no monetary payment to be made to Turner and that the Award rendered only sustains the contention of the Organization as an interpretation of Rule 12, and, as previously stated, we have accepted the Board's Award and the interpretation as placed on Rule 12 will be applied to any cases subsequent to the date of that Award July 25, 1938.

Yours truly,

/s/ W. H. Tobin
Asst. Gen'l Manager."

and would call particular attention to the 4th, 5th, 6th and 7th paragraphs of this letter, showing there was no claim or complaint on the part of Bradford during the period of time he was in service and not presented by the Organization until several months after Bradford was out of the service, then under Award 697, undertaking to make the interpretation as rendered by your Board in that case retroactive. Further, in your Board's Award 697 we did not make any monetary payment to the claimant. The award rendered in that case reads:

"The claim is sustained as an interpretation of Rule 12."

and the Carrier has complied with that award, accepting that interpretation following receipt of such Award.

In conclusion would call attention to your Board's Award 684, ruling in part under its Findings:

"Claim had not been presented to the Carrier until the conditions of which complaint is made had disappeared, thus causing it to be one not cognizable by this Division."

which is true in the case now before the Board. Claim was not presented until conditions complained of did not longer exist, as we accepted the interpretation as placed thereon by your Board in its Award July 25, 1938 and this claim was not presented until August 10, 1938.

Would also call attention to your Board's Awards 849, 851 and 932 denying retroactive payment beyond the first claim made and this is a claim prior to time first presented, August 10, 1938.

Would also call attention to your Board's opinion in Award 696, wherein it states in the last paragraph of the Opinion:

"In view of the special circumstances of this dispute, the readjustments in the rates of pay involved should not ante-date the period on which the claimants respectively made their claims."

The claimant in this case, Steward Bradford, has not made nor presented a claim to the Carrier and the General Chairman, as previously shown and on which there is no dispute, did not present any such claim until August 10, 1938; and they are now undertaking to make a claim retroactive prior to that date and the Findings of your Board in its Award 696 would deny this.

OPINION OF BOARD: This docket presents the claim of Dining Car Steward M. M. Bradford for the rate of pay applying to dining car stewards with over six years of service from date called back to service in February 1937 to April 15, 1938 when he was furloughed.

On July 25, 1938, more than three months after claimant was so furloughed, this Division rendered Awards Nos. 696 and 697 covering the claims of three dining car stewards on the interpretation of Rule 12 of the agreement. Those awards sustained the contention of the Employees for the interpretation of Rule 12 on which the present claim is based. In the Employees' Statement of Facts in Docket No. DC-693, on which Award No. 697 was based, it was stated that "the principle here involved affects other dining car stewards."

In Award No. 696 it was stated in the Opinion, "In view of the special circumstances of this dispute, the readjustments in the rates of pay involved should not ante-date the period on which the claimants respectively made their claims." Prior to Award No. 696 the Rule had always been interpreted and payment made by the Carrier as payment was made to Bradford, the claimant. During the period in question, Bradford made no claim for the increased rate. In fact Bradford has never personally made a claim to the Carrier.

August 10, 1938, three months after Bradford had been furloughed, this claim was first presented to the Carrier by the Organization.

September 19, 1938, the Carrier by the letter of W. H. Tobin, definitely denied the claim. Later, on June 4, 1939, the claimant was recalled to service and from then on was paid the rate herein claimed.

On October 28, 1942, the Organization served notice of intention to file and on December 14, 1942, did file this claim, more than four years after it had been denied by the Carrier. No intervening action or steps of any kind by the Organization is shown. This is not a case of a continuing violation of the contract but is, and from its inception has been merely a money demand against the Carrier for an increased rate for work which was completed before the award on which the claim is predicated, was rendered.

To permit recovery on such a claim would not only be most inequitable to the Carrier but would certainly be against the spirit of the Railway Labor Act and the Rules of Procedure adopted by this Board. The Act provides for the prompt and orderly settlement of disputes. The Rules of Procedure represent an attempt to accomplish this result.

If after an award changing the interpretation of a Rule, the Employees were permitted to go back and apply the new interpretation to the support of claims for additional pay for similar work completed and paid for long before the award was rendered, confusion, and uncertainty to the Carrier, and delay in the settlement of disputes would result.

Under the facts shown by this Record, the claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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

There was no violation of the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.