Award No. 3801
Docket No. DC-3799

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas—Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 495

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 495 for and in behalf of Bartender H. Townsend, that he be compensated for the difference in the rates of pay of a waiter and a bartender, from December 12, 1946, until he is allowed the privilege of exercising his rights as a bartender.

OPINION OF BOARD: Carrier operates through dining and tavern cars on trains between New York and Miami, using in Florida the lines of the Florida East Coast Railway. Claimant Townsend was assigned as a bartender on such a run. It appears claimant and an F.E.C. conductor had some words, and officials of the F.E.C. notified Carrier to withdraw Townsend from service on its line. No formal charges were lodged, no hearing held or requested. No formal action was taken by Carrier. After an informal conference with Carrier, claimant voluntarily relinquished his position on that run. But we find nothing in claimant's conduct which may be construed as a waiver by him of his right to insist on the benefits of his seniority, even to an assignment which would take him over the F.E.C. Lines.

Later by exercising his seniority he was assigned a position as bartender on a run which did not operate over the F.E.C. This run was subsequently abolished, and on December 12, 1946, all tavern car service of Carrier was limited to trains operating over the F.E.C. Thereupon claimant applied for a position as bartender on one of these trains to which he was entitled by seniority. Because of the previous objection to him by the F.E.C. officials, Carrier refused him such a position, and he had to take an assignment as a waiter at a lower rate.

Carrier's position in this case appears to be that its employes have no contractual or seniority rights to positions on such runs as Carrier may operate on foreign lines. But that contention cannot be sustained. The agreement between Carrier and its employes covers all Carrier's dining car service wherever Carrier may provide it. When Carrier operates through service between points requiring the use of connecting lines, the coverage of the agreement is certainly not confined to the limits of Carrier's own rails. Carrier's employes remain its employes with all the rights and privileges accorded them by their agreement with Carrier regardless of the lines over which Carrier furnishes its service.

There can be no question of claimant's fitness and ability. The Carrier has raised none on its own accord and could not properly do so because it continued claimant as a bartender on runs not using the F.E.C. The F.E.C.

may not raise such question because it is not a party to the Agreement so is not, and cannot be, the judge of such qualifications. Compare Award 1233.

It is clear that Carrier has improperly denied claimant the benefits of his seniority, and the claim must be sustained.

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 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 Carrier has violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1948.